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Congress and Bilingual Education
Abigail M. Thernstrom

The Graying of Civil Rights Law — *Peter H. Schuck*

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The Gas Lines of '79
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E pluribus plura – Congress and bilingual education

ABIGAIL M. THERNSTROM

AMERICA, the most ethnically heterogeneous nation in the world, is one of the most linguistically homogeneous. Yet today the ideological underpinnings of that homogeneity are largely gone. Acculturation is out of fashion; cultural maintenance is in. Ethnic loyalties that have frequently appeared subversive now seem healthy.

In this new climate, the use of languages other than English is mounting. In August 1979, *The New York Times* referred to the current use of Spanish as, in effect, the institutionalization of a second official language. In California, it pointed out, Pacific Telephone has now made available a supplementary Spanish-language directory. Other private companies—especially banks—are offering similar services. Spanish-language newspapers and radio stations are proliferating. Public agencies, too, are operating on a bilingual basis. HEW offers Spanish as well as English informational material. Bus and subway signs in Chicago are posted in both languages. In most large cities the police can be called in Spanish.

More important, however, than the provision of bilingual instructions on a public telephone, or the availability of a Spanish-language exam for a driver's license applicant, is the extraordinary growth of bilingual and bicultural education. In schools across the nation,

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the type of instruction a child receives frequently depends on that child's ethnic origin. The public school no longer functions to transmit a common culture. Children from different ethnic cultures are taught differently. The Spanish-surnamed child learns math in Spanish—often without regard to the level of that child's English proficiency. Moreover, the history that child learns differs from that which his Japanese-American or Polish-American peers are exposed to. And the concepts he is expected to deal with are not the same.

The spread of bilingual education, it might be thought, is the natural fruit of the new ethnicity. But the chronology is wrong. In 1968, the year the Elementary and Secondary Education Act (ESEA) was amended to include Title VII (the Bilingual Education Act), ethnic separatism was not yet in fashion. The act provided the first federal funding for bilingual education, and set in motion a wave of subsequent legislative and judicial support. But in 1968 "roots" still had a botanic ring; affirmative action—as we know it—was several years off; and ethnic power was perceived as the slogan of an isolated black minority.

Yet, as the history of Title VII shows, that black minority was more influential than it appeared. The message of black nationalism had reached white ears, and in 1968 liberal Congressmen used arguments taken from the movement for black power to generate support for a bill aimed at solving the educational problems of children inadequately proficient in English.

The connection between black nationalism and the new ethnicity has not gone unnoticed. But insufficiently recognized is the degree to which the black nationalists were indebted to Congress for the transmission and legitimation of their message. Other groups were ready to listen, of course, and the way had been paved by a general collapse of faith in a nation united by common values. But in espousing the primacy of the group and promoting cultural pluralism, Congress played an important role.

The first Bilingual Education Act

The endorsement of cultural pluralism is not obvious on the face of the legislative act. Not even the promotion of bilingual education is clear. Although Congress specified that Title VII of the ESEA might be cited as the "Bilingual Education Act," neither in its summary of "Findings" nor in its "Declaration of Policy" did the legislature refer specifically to bilingual instruction. Mention was made, instead, of "the special educational needs" of children with

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limited English-speaking ability and the desirability of "new and imaginative," "adequate and constructive," "forward-looking" elementary and secondary school programs. The problem was both political and definitional. In 1968 nobody knew and nobody had the authority to decide precisely what bilingual education meant. The reference to "new and imaginative" programs left the definition of those programs largely in local hands. It was a solution that gave those who believed in cultural maintenance quite a free hand.

Bilingual instruction was not a new idea. But to the parents who demanded and obtained bilingual education for their children in Cincinnati in 1840, its meaning was quite clear: instruction conducted in German as well as English. Not only in Cincinnati, but in many communities in the latter half of the 19th century, education utilizing the native tongue of non-English-speaking immigrants flourished. But such education was always initiated and funded at the local level, and it was plagued by few of the politically explosive definitional problems that burden contemporary, federally sponsored legislation.

The bilingual instruction that emerged in the 19th century did not survive World War I. But in the 1960's a heightened consciousness of "the other Americans" brought with it new concern for the educational plight of the linguistically disadvantaged, and interest revived. The initial focus of that concern was on Mexican-American children in Texas. The hearings on the bilingual education bill that Senator Yarborough introduced in January 1967 were dominated by discussion of Hispanics in general, with particular emphasis on Mexican-Americans. The school drop-out rate of Hispanic children, it was argued, was appallingly high. The median number of years of schooling completed by Spanish-surnamed adults was half that of Anglos and considerably below that of blacks. In fact, many had no schooling at all. "The fault lies with our educational system," Senator Kuchel of California asserted.

Of course the fault did not lie entirely with the American educational system. A large proportion of the Spanish-surnamed adults had been born and raised in Mexico. But political effect, not sociological exactness, was the primary concern of the congressional witnesses.

Bilingual education, it was argued, would solve the special educational problems of Hispanic and other "limited English-speaking ability" (LESA) children. In the educational race, these children were off to a poor start. Language difficulties prevented them from

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acquiring the basic skills other children got in the early grades. A bilingual program would equalize educational access.

In addition, it was said, Spanish was easier to learn than English: It was written as it sounded. For the Spanish-speaking child, then, the fastest route to English literacy was actually through Spanish. The skills of reading and writing, once mastered in the simpler language, could be transferred to the more difficult one.

Of course not every good idea demands federal support. In the 19th century, local schools had taken the initiative, and in the 1960's they were equally free to do so. In fact, some had. Early in the decade, Dade County, Florida, had begun a program for Cuban-refugee children. In Texas, Delaware, New Mexico, Arizona, and California, other programs had sprung up.

But without federal encouragement, Senator Yarborough and others believed, the number of such programs would remain small. And the federal assistance that was already available was insufficient. Title I of the 1965 Elementary and Secondary Education Act (ESEA) gave financial aid to local schools for the education of children from low-income families, and that aid could be used for bilingual instruction. But the money was more likely to be put to other uses. If bilingual education were really to take hold, Senator Yarborough and his co-sponsors were convinced, separate and specific funding would be needed.

Was bilingual education the answer?

How many children were actually handicapped by language difficulties, and would bilingual instruction meet their needs? These were important questions because federal encouragement came at a price: intrusion into local educational affairs. The Bilingual Education Act made painless the capitulation of local educational authorities to demands from ethnic groups for an ethnically-oriented program. Thus, indirectly, it made educational content the concern of a federal agency and was another important step along the road that its parent legislation, the Elementary and Secondary Education Act, had first tread.

The magnitude of the need for bilingual education might seem simple to gauge. In fact, however, we had no accurate count of the number of LESA children in 1968; nor do we now. Data have been gathered from surveys conducted by the Bureau of the Census and by the National Center for Education Statistics. But, as an unimpeachably neutral source, the Library of Congress, put it in a 1978

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Report: "Currently there is no actual count of the number of persons in the United States that are of limited English-speaking ability and thus no valid estimates of the need for bilingual education programs."

In any case, no such count would settle the question. Not all LESA children are the same. Some are further down the road to assimilation than others. Perhaps the need for bilingual education is confined to those children who seem to be permanent members of an enduring ethnic subculture. Children from Mexican-American families living close to the border, and from Puerto Rican families in New York City, fall most obviously into this category. In such families members of the second and third generations often continue to speak Spanish. And often they continue to move back and forth across the border, or between the island and the mainland in the case of Puerto Ricans. Few immigrant families from Europe, Asia, or even elsewhere in Latin America maintain such close ties.

The case for bilingual education is not even clear for the most unassimilated Hispanics. Their seeming resistance to acculturation may be a temporary phenomenon—no more permanent than that of the French Canadians in New England a century ago. Social isolation, and with it, linguistic and cultural loyalty, may be slowly breaking down, and it may be more important to facilitate that assimilation than to support the native culture.

Some LESA children are more assimilated than others, and some are more socially and economically advantaged. Should the provision of bilingual instruction hinge on such advantage? In 1968 Congress thought it should. Title VII funded programs for children from low-income families only, and was in this sense in keeping with the rest of the ESEA. Other children, sponsors of the legislation assumed, could cope with a regular program. But by 1974, when the act was renewed, the acknowledged purpose of bilingual education had become less pedagogical and more political, and the link between linguistic and economic disadvantage was severed; all LESA children then became eligible for aid.

In other words, we don't know how many LESA children there are, and we are not sure which among them would profit from a bilingual program. Such a program may be neither necessary nor helpful for those who are either on the road to assimilation or economically advantaged.

There is a further difficulty. Hispanic children do poorly in school, but language may not be the main problem. The 1968 act (but not its subsequent amendments) recognized the importance

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of socio-economic factors; limited English, its sponsors assumed, was a handicap only in the context of broader disadvantage. But even in 1968 the importance of that disadvantage may have been greatly underestimated. A 1975 study by the National Center for Educational Statistics shows that whereas Hispanic children in the early grades are behind blacks, by grade nine no difference between the groups remains. To the problem of academic failure, then, bilingual instruction may provide no solution. And in fact, even if the link between limited English and scholastic performance were clear, the best course of action would remain in doubt. The value of instruction in two languages is unproven; special classes in English might obtain better results.

Black power and white liberals

Actually, neither the question of the number of children nor that of the efficacy of bilingual instruction was seriously debated in the 1967 Congressional hearings. The chairman of the House and Senate committees did not call witnesses—in the sense of experts on the educational and political questions raised by the legislation—but (with few exceptions) lobbyists. Ethnic activists—mostly Hispanics—came to testify on the bill's necessity. The hearings both opened and closed with the committees convinced that there was a real need and that bilingual education would meet it.

It was not, however, the educational value of bilingual education that most attracted the Congressmen. To a large extent, the educational arguments were window dressing—allowing the solution to an allegedly educational problem to be framed in educational terms. The more fundamental need, as the Congressmen saw it, was for a society more responsive to ethnic diversity. To read through the Congressional hearings on bilingual education is to realize the degree to which, in the late 1960's, the revolution against American culture felt so strongly on the alienated left had imbued the thought of mainstream liberals as well. The impact of the movement for black power and community control is particularly clear.

At the center of the black power argument was a psychological contention: American racism had so damaged the self-esteem of blacks as to make a reawakening of ethnic pride the paramount task. It was not an insight to which the militants could lay special claim. Moderates such as Kenneth Clark, James Farmer, and Martin Luther King, Jr. had made the point much earlier. "Human beings," Clark had written, "who are forced to live under ghetto conditions

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and whose daily experience tells them that almost nowhere in society are they respected . . . will, as a matter of course, begin to doubt their own self-worth." The concern with self-worth runs through all of King's writings. "We must no longer be ashamed of being black," he said. But "[t]he job of arousing manhood within a people that have been taught for so many centuries that they are nobody [will not be] easy."

The key to the resurrection of that manhood was the creation of institutions run by blacks. Such institutions would lay to rest the myth of black incompetence. Schools were especially important. The body can't be free while the mind is enslaved, King had said. Black-power advocates spoke of the need for blacks both to know their roots and to break loose from the dominance of white values. In integrated schools black children were assimilated into white culture; in black schools they would learn their own worth.

The movement for black power, in the view of its proponents, was not to be confused with any more general ethnic revival. No other ethnic group had experienced the rejection felt by blacks. None had raised children so outside the culture. As one advocate put it:

> Millions of black parents have been confronted with the poignant agony of raising black, kinky-haired children in a society where the standard of beauty is a milk-white skin and long straight hair.

And while,

> this identity problem is not peculiar to the Negro . . . for the Negro the problem has a special dimension, for in the American ethos a black man is not only "different," he is . . . ugly and inferior.

This crucial insight—that whatever the psychological damage done to other groups by white ethnocentrism, it would not be equal to that imposed on blacks, for no other group had experienced such prolonged and ubiquitous racism—was lost on Congressional witnesses at the 1967 hearings on bilingual education. These witnesses transferred the argument for ethnic solidarity from blacks to other groups. American education, they said, by forcing Hispanic children (especially) to accept an alien culture, encouraged them to reject themselves. The American school, they said, "assaulted . . . the cultural identity of the child. . . ." A "haunting ambivalence of language, of culture, and of personal self-affirmation" had been created. To ask a child to deny "himself and his family and his forebears" was to demand "a form of masochism" which no society should ask.

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Blacks and Hispanics: a flawed comparison

Black-power advocates had reversed the Supreme Court's argument in *Brown v. Board,* and white liberals in the 1960's had adopted that reversal. Children who are racially segregated suffer irreparable psychological damage, the Court had contended. "To separate [children] from others of similar age and qualifications solely because of their race," Chief Justice Warren had said, "generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." Black militants and their liberal sympathizers turned this argument around. To *assimilate* children into an alien culture, they said, creates feelings of inferiority.

Witnesses at the Congressional hearings on bilingual education were close to unanimous in voicing their rejection of assimilation. "I do not think we have ever measured the psychic cost of the melting pot," it was said. But supporters of the bill believed in a pluralistic society and in cultural maintenance for their own sake, too. The U.S. Commissioner of Education called for the abandonment of the melting-pot ideal: "Perhaps a better image" could be used, he said. "It is the image of the mosaic which has a great variety in it, and which gains its strength from variety." A former Texas schoolteacher remarked: "The United States should be big enough to allow us the freedom to be different without being oppressed." And Representative James H. Scheuer from New York said: "I think we have discarded the philosophy of the melting pot. We have a new concept of the value of enhancing, fortifying, and protecting [people's] differences, the very differences that make our country such a vital country."

It was a compelling argument when made with reference to blacks, yet much less so when applied to other groups. The essential element of the history of massive segregation was missing. It was not the imposition of an alien culture that had been so damaging to blacks, for other groups had faced assimilationist pressure. It was the combination of integration and ostracism that had been so hard. Neither the Hispanics nor any other group had suffered the same degree of denigration of the native culture and exclusion from the American one.

Congressional liberals and witnesses had taken a point that was psychologically sound but culturally and politically problematic —that blacks could and should maintain separate institutions and distinct values—and by applying it to other groups had transformed it into a contention that was psychologically dubious but culturally

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and politically plausible. That is, although the psychological damage to blacks had been real, the revival and maintenance of a distinct and segregated culture was difficult; assimilation had gone too far. But for certain pockets of the Hispanic community, the problem was reversed. The Mexican-Americans in southwest Texas, for instance, had suffered no long-term psychic harm comparable to that experienced by blacks—at least there was no claim at the hearings that they had—but their relative isolation and the closeness of their ties to Mexico made cultural maintenance much more possible. The point applies to a lesser extent to such other groups as Puerto Ricans and French Canadians.

This distortion of reality had important consequences. In the writings of proponents of black power, it was the history of unparalleled racism and the need to renew a sense of self-worth that justified segregated schools. Without the claim to massive psychic harm, there was no case for ethnic separatism. Congressional supporters of bilingual education spoke in terms of transitional programs—programs designed to cope with temporary problems of scholastic achievement. But the arguments they heard and accepted, adapted from the civil rights rhetoric of the late 1960's, encouraged quite a different vision: building within the schools permanently protective ethnic enclaves.

Yet the problem of the disparity between what the sponsors hoped for and what they actually created did not become apparent until later. At the hearings testimony was heard almost exclusively from ethnic lobbyists, and few committee members even bothered to attend. This was special-interest legislation, protected by the special status that all legislation related to civil rights had in the 1960's. Moreover, it was packaged well: Images of needy children, discrimination, poverty, and potential psychological harm were floated before Congressional eyes. The public wasn't watching; the expenditures envisioned were relatively small; and most important, its proponents were organized but its detractors were not. Thus the bill was politically costly to oppose but potentially lucrative to support.

The act is implemented

Title VII, otherwise known as the Bilingual Education Act, was signed into law in January 1968. It provided funds for the planning and implementation of programs "designed to meet the special educational needs of children of limited English-speaking

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ability in schools having a high concentration of such children from families (A) with incomes below $3,000 per year, or, (B) receiving payments under a program of aid to families with dependent children. . . ." Such programs could be bilingual; they could be "designed to impart to students a knowledge of the history and culture associated with their language"; they could consist of "efforts to establish closer cooperation between the school and the home"; and so forth. It was all quite vague.

For the first full year of the act, beginning in June 1968 (FY 1969), the Congressional authorization was $30 million, but the actual appropriation only $7.5 million. Those funds were used to support 76 projects, serving 26,521 children.

The issue that lay in waiting and subsequently became the focal point of greatest controversy—the clash between the transitional programs Congress envisioned and the schools-within-schools that it encouraged—arose in the course of implementation. The actual design and administration of programs forced into the open the beliefs of those who supported linguistic and cultural pluralism. Supporters of the act thus broke into two more or less distinct camps: transition and maintenance. In the first were those who viewed bilingual education as a means of providing temporary shelter and a transition to competency in English; in the second were those who saw it as a way of resisting assimilation by keeping children within the linguistic and cultural fold of another milieu.

Administrators at the local level and in HEW's Division of Bilingual Education generally supported maintenance programs, while those holding high positions in HEW, the Office of Management and Budget, and other executive agencies—if they supported bilingual education at all—favored a transitional approach. The alignment made sense. In local areas, those who came forward to design programs were those who were most enthusiastic, and that enthusiasm generally stemmed from a general belief in cultural pluralism. The staffing of the Division of Bilingual Education by ethnic militants followed an administrative tradition: Government programs aimed at a particular group are often run by militant members of that group. Thus, politically aggressive veterans administer veterans' programs, civil rights enthusiasts staff the Office of Civil Rights in the Department of Justice, and so forth. But it was to be expected that the high-ranking Republican appointees in the Nixon Administration would be more generally conservative.

The two sides were not evenly matched, for the local authorities, in effect, had all the marbles. In the first place, although united

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in opposition to maintenance programs, the Nixon appointees could not agree on a uniform policy. Further, Congress had given the Administration no mandate to impose a policy, had one been formulated. On the contrary, the act had turned over the task of defining bilingual education to the local school.

In any case, the main weapon that the Administration possessed against the ethnic pluralists in control of local programs was the power of the purse. But Congressional authority over appropriations, combined with a steadily increasing suspicion of the Nixon Administration, made it very difficult to pull those purse strings tight. In the Nixon years, Congress often doubled the appropriation that the President requested. Congress did not positively favor cultural maintenance, but in opposing the Administration it was the ally of ethnic pluralists. The enemy of its enemy became its friend.

Thus appropriations rose: from $7.5 million for FY 1969 to $58.3 million for FY 1974. The number of projects jumped from 76 to 383, the number of children served from 25,251 to 339,595. Most of the children were Hispanic. Twenty-three other groups were served, but they received only 20 percent of the funds.

1974: bilingual education expands

In 1974 the act was renewed and altered to include a definition of bilingual education that distinctly favored maintenance. That inclusion was influenced by an important decision, *Lau v. Nichols*, in which the Supreme Court had ruled that LESA children were entitled to some sort of remedial instruction, as well as by pressure from the Commission on Civil Rights and from various ethnic groups. The final form of the new act was the product of an extended debate between Congress and the Administration, and to a lesser extent within Congressional committees themselves.

The wording of the new legislation was primarily the work of Senators Kennedy and Cranston, and initially they hoped for a bill which would unequivocally put the federal government behind full-time bilingual and bicultural instruction as *the* means by which LESA children learn. The programs envisioned would have been maintained through 12 years of elementary and secondary schooling. "When the United States is the fifth largest Spanish-speaking country in the world and when a near majority of people in this hemisphere speak Spanish," Senator Kennedy said, "surely our educational system should not be designed so that it destroys the language and culture of children from Spanish-speaking backgrounds."

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There was considerable support for the Kennedy-Cranston language in the education committees of both houses—committees that are generally dominated by liberals. But both in the Senate and House there were voices of moderation with considerable clout. And there was also the ultimate threat of a Presidential veto. What Senators Kennedy and Cranston wanted, therefore, they did not quite get. Nevertheless, the new act made seven important changes in the legislation:

1. The poverty clause was eliminated; eligibility was no longer determined by family income.

2. Bilingual education was no longer depicted as experimental; its efficacy was assumed. And while the earlier act had spoken simply of the need to fund "new and imaginative" programs, the policy in 1974 had become "to *encourage* the establishment and operation, where appropriate, of educational programs using bilingual practices. . . ." "Large numbers of children of limited English-speaking ability have educational needs which *can* be met" by bilingual instruction, it was unequivocally asserted. It should be noted that Senators Kennedy and Cranston initially opposed the inclusion of the modifying phrase "where appropriate," but became convinced that its addition would facilitate passage.

3. While the 1968 act had made vague reference to "the special educational needs" of the LESA child, the 1974 legislation stated that "a primary means by which a child learns is through the use of such child's language and cultural heritage." Kennedy and Cranston had wanted the act to read "*the* means," rather than "a primary means," but again were forced to compromise.

4. The definition of bilingual education was rewritten to include "instruction given with appreciation for the cultural heritage of such children." Funded programs thus became bilingual-bicultural.

5. The act made specific provision for the enrollment (on a voluntary basis) of a limited number of children whose primary language was English. Cross-cultural appreciation was the stated rationale, but the true aim was obviously to foster the ethnic consciousness of English-competent children.

6. In an attempt to deal with the problem of the segregation of participating children, it was specified that such children should join their English-speaking peers for subjects such as art, music, and physical education.

7. A special Office of Bilingual Education was created within the Office of Education.

Between 1974 and 1978, when the act was once again renewed,

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appropriations jumped from $58.3 million to $135 million. The number of projects rose to 565, and the number of language groups served to 70. In great part the expansion in the number of language groups included was due to the *Lau* decision, which made bilingual education a statutory right. Prior to 1974 HEW had not regarded ethnic groups such as Italians as sufficiently disadvantaged to warrant special bilingual instruction. But *Lau* was widely interpreted as mandating some sort of remedial instruction for all children whose limited ability to understand English made them unable to "effectively participate" in the regular educational programs.

1978: Congress begins to ask questions

By 1978 appropriations had reached a new high, but, ironically, Congressional enthusiasm had hit an unprecedented low. In the hearings on the renewal of the act, spokesmen for bilingual-bicultural education were both on the defensive and upstaged. The roster of witnesses had changed; professional experts by and large had replaced ethnic lobbyists. As a result, attacks on the historic ethnocentrism of American education gave way to a serious debate over the educational efficacy of bilingual instruction.

Over the decade the political mood had changed, and that change accounts in part for the shift in tone. But equally important was the impact of several sobering evaluations of bilingual education, the most important of which was conducted by the American Institutes for Research (AIR) under contract from the U.S. Office of Education. 1978 was the morning after, and in the light of day programs that had been so hastily and enthusiastically embraced appeared full of flaws.

The four-year AIR study of 11,500 Hispanic students concluded that most of the children did not need to learn English; that those who did were not in fact acquiring it, that with few exceptions the programs aimed at linguistic and cultural maintenance; and that to the degree that children were already alienated from school, they remained so.

Only in math did the LESA children enrolled in a bilingual program appear modestly more proficient than their unenrolled peers, and by national standards they were still woefully behind. No noticeable improvement had occurred in English. But most of the programs were not even designed to increase English competency, the study discovered. In one school, all students had been auto-

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matically placed in a bilingual project; the children of parents who objected were moved out of the school district. In fact, less than one-third of the students in Title VII classrooms were there because of their need for English instruction. Only 16 percent were Spanish monolingual.

One reason the programs served such a high percentage of English-competent students was because transfers out of Title VII classrooms were rare. Eighty-six percent of the project directors and teachers reported that students remained in the bilingual programs after they had mastered English. Another 9 percent said that students were transferred to English-only classrooms but with some Spanish language maintenance. Only 5 percent reported no effort to maintain either the Spanish language or culture.

Were the Title VII students happier in school? Did the programs —as it was initially hoped—whet their appetites for academic achievement? AIR found no evidence that they did. It was altogether a discouraging picture. As the director of the study told the House Subcommittee on Education, "[T]here is no compelling evidence in the current data of the Impact Study that Title VII bilingual education as presently implemented is the most appropriate approach for these students."

The pall cast by the AIR study was evident throughout the Congressional hearings. Supporters of the act were on the defensive. In 1968 the Chairman of the House Subcommittee had announced that he was hopeful "that our action may ultimately become the forerunner of placing this Nation on a bilingual basis." But in 1978 when Representative Quie asked John C. Molina, Director of the Office of Bilingual Education, whether he thought the United States should become bilingual, Molina was forced to reply, "The idea is so far-fetched that I don't give it much thought." Molina agreed that the first goal of a bilingual program should be to make students proficient in English, but those studies which indicated a lack of proficiency did not trouble him. "You can't evaluate a bilingual education program," he attempted to argue. "It is a philosophy and management."

Dr. Molina had a point. The proposition that the preservation of native language and culture would produce healthy children and a healthy polity could not be tested. Only the educational impact of the programs could be measured. AIR had assumed that better education—as the foundation of economic success—had been the legislative aim. But Congress had two conflicting goals in mind: It wanted both to enlarge the opportunity for individual mobility

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and at the same time to increase the prospects for ethnic solidarity. And the latter was certainly as important as the former.

Another critic went similarly astray. Gary Orfield, a political scientist at the University of Illinois, argued that many of the bilingual programs "pursue not successful integration into American society but deeper cultural and linguistic identity and separation." It was true enough, but beside the point. In the 1967 Congressional hearings "segregation" had been called cultural pluralism. What Orfield championed—the integration of children into the dominant culture—Congress had earlier spurned.

The chastened Congressional mood was reflected in the renewed but amended act of 1978. Congress made four important changes in the law:

1. A ceiling of 40 percent was placed on the number of English-speaking children who could be included in a bilingual program, and it was made clear that their role was to provide help for those with limited English. It was a clear blow to advocates of linguistic and cultural maintenance, for programs could no longer be filled by English-competent ethnics, segregated into special classes for the purpose of maintaining ethnic solidarity.

2. New stress was placed on the importance of parental involvement. Applications for federal assistance required the prior consultation of an advisory council composed, in the majority, of parents and "other representatives" of LESA children. Parental contact, moreover, was expected to continue throughout the life of a program. Whether the "other representatives" could be politically active ethnics in the community was not specified, but certainly their overall role had been diminished. At the hearings the director of the AIR study had described the forced reorientation of some programs in the face of parental demands that their children learn English, and other witnesses had confirmed his account. This provision clearly paid homage to these reports.

3. Local schools were instructed to hire teachers proficient in English as well as the language of the group being served. And standards were expected to be set to determine both need and the point at which that need was exhausted. Thus local schools were pressured to graduate from the bilingual programs those pupils who had mastered English, but the definition of initial need and final mastery was still in local hands, and the willingness and ability of federal authorities to monitor compliance remained limited.

4. The description of eligible participants was changed from those with limited English-speaking ability to those with limited

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English proficiency. This allowed the inclusion of students who could speak English, but neither read nor write it.

The 1978 modifications have not quieted the controversy that continues to surround the Bilingual Education Act. Now due to expire in June 1983, its future is uncertain. Budgetary considerations alone might result in the curtailment of Title VII programs; AIR reported an additional cost of 37 percent to educate a Title VII child, and at present that extra cost appears to bring no obvious educational benefit. Or perhaps the ethnic revival will collapse as fast as it arose; support for programs which strengthen ethnic identity would then evaporate.

But programs and institutions often survive ideological shifts. Title VII could expire and yet bilingual programs remain, for it is the most important, but by no means the only federal act to fund such education. The Emergency School Aid Act, The Vocational Education Act, The Adult Education Act, The Higher Education Act, and a number of others all authorize support. Moreover, Title VII sent out both legislative and judicial offshoots. Bilingual education is currently funded on either a voluntary or mandatory basis by 16 states. But most important, judicial decisions have made bilingual education not simply an option, as the 1968 act had intended, but a constitutional and statutory right.

From an option to a right

The most important of those decisions has been *Lau v. Nichols,* decided by the U.S. Supreme Court in January 1974. The case involved non-English-speaking Chinese students in San Francisco. At the time there were approximately 2,800 such students in the San Francisco school district, roughly 1,000 of whom were receiving supplemental education in English. The remaining 1,800 brought suit (in a class action) on the ground that they had been denied equal educational opportunity. Persons similarly situated, they argued, should receive similar treatment; they, too, were entitled to the supplementary language courses.

Both the district court and the appeals court decided against them. In a restatement of the classic American doctrine of equality, the Court of Appeals said: "Every student brings to the starting line of his educational career different advantages and disadvantages caused in part by social, economic, and cultural backgrounds, created and continued completely apart from any contribution by the school."

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But the Supreme Court reversed. Avoiding the task of redefining the constitutional right to equal educational opportunity, it rested its opinion, instead, on statutory grounds—specifically on guidelines issued by the Department of Health, Education, and Welfare to clarify the meaning of Title VI of the Civil Rights Act of 1964. Title VI had banned discrimination based upon "race, color, or national origin" in "any program or activity receiving federal financial assistance." A guideline issued on May 25, 1970 had stated: "Where inability to speak and understand the English language excludes national origin minority group children from effective participation in the educational programs offered by a school district, the district must take affirmative steps to rectify the language deficiency. . . ."

To the uninitiated, resting a judicial decision on a regulatory guideline might seem anomalous. But as the Court pointed out, it had been done before, and the act itself had specifically directed HEW to secure compliance by "issuing rules, regulations, or orders." As the Court saw it, by this authorization the guidelines had, in effect, become part of the Congressional act. To violate them was to violate the legislation itself.

Although the students had brought suit to gain entrance to supplementary courses in English, and although the Court specified no particular remedy—leaving the question of an English immersion program versus a bilingual one up to local authorities—nevertheless *Lau* was quickly interpreted by HEW to require both bilingual and bicultural instruction. Those who chose not to adopt such a program could come up with an alternative but equally effective remedy. But as one school administrator asked, how do you show that one program is as good as another when the worth of the other has never been proven?

The plaintiffs in *Lau* had been Chinese-Americans, but the Hispanics had won. The Chinese-American community had run after-school and other privately funded programs but had never had an interest in the maintenance of ethnic identity by means of public support. What it wanted, and what it went to court to get, was help with English. It had been denied, it said, equal educational *access* —that access which greater competency in English would allow. But the Hispanics had consistently made a different argument: that equal participation depends on equal academic *motivation*, and that motivation in turn depends on the self-image the child acquires in school. Bilingual-bicultural programs, with their special emphasis on the positive contributions to history made by a child's ethnic

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group, and their reinforcement of the child's home language, bolster that self-image so that adequate motivation and thus equal participation is possible.

HEW bought this argument and the *Lau* decision was followed by the promulgation of new guidelines and the establishment of General Assistance Centers (known as "Lau Centers") to provide technical assistance to schools required to develop compliance plans.

The bilingual-bicultural programs which HEW imposes upon laggard school districts are funded through the Office of Bilingual Education. In theory, federal funds can be denied any school district which fails to comply with the requirements of the Civil Rights Act, and as interpreted by HEW subsequent to *Lau*, those requirements include the provision of bilingual-bicultural education in any district with more than 20 LESA children. In practice, however, federal funds are almost never denied, in great part because such a denial would most hurt those whom Title VI had been passed to benefit. In the case of violations of *Lau*, a simpler and more efficacious sanction is applied. The school district is invited to apply for Title VII funds. Thus the line between legislative and judicial action has been largely dissolved. A school district with more than 20 LESA children can choose not to apply for federal funds; there is nothing mandatory about the programs authorized by the Bilingual Education Act. But the HEW Office of Civil Rights might then find that district in violation of *Lau*, the remedy for which is precisely that application for funds which the school district had initially declined to make.

Lau has been the most important, but by no means the only judicial decision mandating bilingual education. In Texas and New Mexico especially, Mexican-Americans have successfully brought suit to force local educational authorities to provide bilingual instruction. In Ann Arbor, Michigan, in an unusual suit, the school district was ordered to submit a plan that would outline steps to be taken to sensitize teachers to the needs of children speaking "black English."

In New York City, in *Aspira v. New York*, Puerto Ricans successfully brought suit to force the Board of Education to institute a massive bilingual-bicultural program. After *Lau* was handed down, the opposition of the Board collapsed. The settlement that ensued differed from *Lau* in two respects. In the first place, not all Hispanic children with limited English proficiency were eligible for bilingual instruction. The Spanish-surnamed child whose English—however poor—was better than his Spanish did not qualify. Linguistic and

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cultural maintenance thus became the prerogative only of those children whose cultural orientation was unmistakably Hispanic.

On the other hand, linguistic and cultural maintenance was much more explicitly endorsed. In the consent decree which settled the suit, the parties agreed to a program which would "reinforce and develop" the child's use of Spanish. The decree also specified that materials used in the program would "avoid negative stereotypes of members of any ethnic or racial group" and would "positively reflect, where appropriate, the culture of the children within the Program." The pool of eligible children in *Aspira* is smaller than in *Lau*, but the commitment to ethnic separatism is greater. It is a difference without a distinction, for what the actual *Lau* decision left out, the HEW regulations put in. But regulations can change; the orders of courts are more likely to stick.

Congress and bilingual education

Lau and *Aspira*, as well as Title VII and other federal and state legislative acts, were a victory for the Hispanic community, for Spanish is the language utilized in 80 percent of all bilingual programs. It is often said that Hispanics have no political power in America, and indeed representation both in Congress and state legislatures is poor. But with minimal representation and only the most rudimentary political organization, Hispanics have gained a great deal. For bilingual education gave to the struggle for Hispanic cultural maintenance—to which Mexican-Americans and Puerto Ricans are unusually committed—its most important tool.

There is much to learn by a perusal of the route by which bilingual education arrived. The call for group consciousness and cultural separatism was first sounded in the mid-1960's by militants on the fringe of the civil rights movement. In the three years between the first mention of black power and the first Congressional hearings on bilingual education, black riots hit American cities. Perhaps liberals, with their historic sensitivity to minority deprivation, were particularly vulnerable to feelings of guilt. Certainly in the midst of the Vietnam War they, more than any other group, had come to doubt the worth of American values and institutions. In any case, the picture of oppression that blacks drew struck a responsive chord in Congressional liberals, and the Hispanic demand for an education expressive of Hispanic cultural values was eagerly met. From the moment it was first introduced, there was never any doubt that Title VII would pass.

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By 1978 that initial enthusiasm had greatly diminished. It was a decade later, and civil rights spokesmen no longer possessed the blank check they had ten years earlier. Questions about the educational worth of bilingual education suddenly became relevant. And the answers received gave Congress pause.

But in 1968 Congress had bought a package it had refused to open, and by the time it became eager to do so, the contents had outgrown the box. By 1983 it will be too late to dispose of the purchase. Bilingual education has spread to most corners of the nation. And judicial decisions make it especially difficult to uproot.

Nor can its consequences be dismissed lightly. We once believed that the nation represented values to which immigrants could subscribe—values which transcended ethnic lines. And we believed in the role of schools in transmitting those values. The advent of bilingual education did not, of course, single handedly strip us of our faith in an American culture of sufficiently universal appeal to cross ethnic lines. But in promoting the notion that the process of Americanization was hopelessly ethnocentric, and in robbing the schools of their traditional integrative function, it has certainly played an important part.

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Richer is safer

AARON WILDAVSKY

THE proverbial man from Mars, observing our safety efforts in the past decade, could not help but conclude that the youth of America were dropping like flies in the streets. Why else would the United States federal government be engaged in a desperate, multi-billion-dollar effort to increase life expectancy? But the Martian historian of earthly safety would note that in the hundred years from 1870 to 1970 every increase in industrialization and wealth, except possibly at the highest levels, was accompanied by a corresponding increase in safety from accident and disease. Thus he would surely wonder: Since personal safety and economic growth advanced together, why is present policy based precisely on severing that link by deliberately decreasing wealth in order to remove risk?

Unbridled economic growth, the standard argument says, has hurt the natural and human environment. The land has been despoiled, the seas polluted, the people diseased. Some of the advantages of quantitative growth, therefore, have to be sacrificed to improve the quality of life. The usual question is how much wealth

This paper was written for the National Science Foundation Program in Technology Assessment, which the author wishes to thank for its support; his apologies to Sophie Tucker, whom he recalls having said, "I've been poor and I've been rich but, believe me, richer is better."

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should be sacrificed for how much health. Answers vary but none is enlightening, because people ask the wrong question.

Discussion on the subject of risk is about costs and benefits. Some say that human life is priceless and should not be contaminated by discussions of vulgar matters of money. Others say that citizens would not willingly reduce their standard of living by much in order to reduce risk a little. Immediately, the objection arises that life and nature are being bought and sold and that the whole exercise is immoral.

Tired of an argument that appears to them irrational—because income stands for all sorts of other things that might improve people's lives—proponents of risk-benefit analysis convert the currency of discourse to a common denominator of lives saved or accidents prevented. They try to show that many more lives could be saved or accidents prevented by far more efficient alternative uses of the same sum of societal resources. This soft answer does indeed turn away wrath.

For the moment, at least, an argument about who is most morally monstrous may be turned into one about which means are efficacious to the same or similar ends. Ultimately, however, the argument neither satisfies nor suffices. It does not suffice because the opponent of risk-benefit comes back with what appears to be a conclusive rejoinder—namely, that the choice is illusory because no one is proposing to spend money on safety *per se*. There is, in fact, no safety budget from which such sums might be shifted to higher-order uses. And since in the nature of the political process, it is not health in general but people suffering from specific diseases that generates support, and not risk in general but reduction for particular people that galvanizes them into action, the argument appears self-serving. In the guise of efficiency, the proponents of lower-level risk believe, the amount spent will be radically reduced.

The argument that expenditures on safety should be compared across the board also does not satisfy because the people making it really do not want to spend that much and they do not know how to explain why. Do they really want vastly increased expenditures on safety so long as these sums are spent in ways they consider more efficient? Consuming the entire national product to reduce risk (in the most efficient way, of course) is not exactly what they have in mind.

A radical reorientation of risk assessment requires an enormous expansion of the classic concept of opportunity cost. Assessment asks whether the alternatives foregone by a certain expenditure are

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worth what is paid for them. Assessment should also ask what the total of all expenditures to reduce risk would be worth in terms of increasing safety if those expenditures went instead into the economy.

The issue should be confronted head on: how much reduction of risk by direct expenditure on that very purpose *versus* how much increase in safety by expanding the national product? Existing public policy is based on the belief that the way to reduce risk is to do so directly for each and every group of people adversely affected. What are believed to be excessive risks are identified and policies are proposed to reduce them by direct action of government. This view may be mistaken. Though efforts to reduce risk in individual instances may be successful, the very same actions may increase risk for more people. To the current conventional wisdom that the way to reduce risk is deliberately to make the nation poorer than it would have been, I counterpose the perception of our parents that, having tried the alternative, "richer is better" and, I would add, safer too.

Health and wealth

Consider the condition of poor countries. Death rates go up as income goes down. Though death rates show considerable improvement after inexpensive public-health measures are introduced, poor countries not only lag behind richer countries, but among themselves have higher or lower death rates according to their relative incomes. The same is true within the United States; health and income remain highly related. Increasing the income of nations and classes is evidently one way of improving safety.

A study by Irma Adelman in *The American Economic Review* of some five countries in 1953 showed the usual "negative long-run association between death rates and economic conditions." She goes on to state what everyone then took for granted:

> For it stands to reason that such factors as better nutrition, improved housing, healthier and more humane working conditions, and a somewhat more secure and less careworn mode of life, all of which accompany economic growth, must contribute to improvements in life expectancy. In addition, as pointed out by Spiegelman, "Fundamentally, health progress depends upon economic progress. By the rapid advance in their economies in the postwar period the highly developed countries have produced wealth for the development of health programs. Also, more efficient technologies in industry are releasing the manpower needed for an extension of medical care and public health services.

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> The intangible contribution of economic progress to lower mortality is derived from the advantage of a high standard of living—abundant, better and more time for healthful recreation."

The classic study of England and Wales in the 1920's by Jean Daric led him to conclude that social class was a more powerful predictor of mortality rates than risk of work.[1]

TABLE I. *Average Life-Span in Societies with Different Energy Consumption in 1950, 1960, and 1970**

AVERAGE ENERGY CONSUMPTION (KG. COAL EQUIVALENT PER PERSON)	AVERAGE LIFE SPAN (YEARS)		
	1950	1960	1970
10	45	52	56
100	48	53	57
1,000	64	66	65
10,000	67	71	72

*Source: L.A. Segan and A.A. Afifi, "Health and Economic Development." Reports RM-78-41 and RM-78-42, International Institute of Applied Systems Analysis (1978).

Within the United States, the same conclusion about "a strong inverse association between mortality and income" was reached by Evelyn Kitagewa and Philip Hauser in their *Trends and Differentials in Mortality* (Harvard University Press, 1973):

> Over the years mortality has declined by reason of a number of factors, including increased productivity, higher standards of living, decreased internecine warfare, environmental sanitation, personal hygiene, public health measures, and modern medicine climaxed by the advent of the pesticides and chemotherapy. Programs aimed at the reduction of death rates have been primarily based on biomedical epidemiology and biomedical ameliorative programs. This analysis of socioeconomic differentials in mortality may be viewed as documentation of the need for increasing attention to socioeconomic epidemiology. The evidence indicates that further reductions in death rates in the United States may be achieved more readily through programs designed to improve the socioeconomic conditions of the disadvantaged elements of the population than through further advances in biomedical knowledge.

The data on life expectancy and economic level for more recent times all point in the same direction: the lower the income, the higher the death rate at earlier ages. Tables I and II are taken from D. K. Myers and H. B. Newcombe, "Nuclear Power and Low Level Radiation Hazards" (Atomic Energy of Canada, Ltd., March 1979, AECL-6482), and present data from quite different sources.

[1] Jean Daric, "Occupational and Socio-Economic Status," British National Office of Vital Statistics, Special Reports, 1951, Number 10.

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Table I shows that in a large number of countries, life span increases with the level of economic development (as measured by consumption of energy). Table II demonstrates that within the United Kingdom, the poorer the person, the worse his chances of survival. As Ernest Siddall puts it: "It appears that the creation of wealth leads to the saving of lives in very large numbers at a net long-term cost which is zero or negative." Improving countries' or classes' incomes increases their safety more than new efforts to reduce risk.

TABLE II. *Effect of Relative Income on the Risk of Death from Various Causes Before Age 65 in the United Kingdom, 1970-1972.*[1]

CAUSE OF DEATH AND AGE GROUP	STANDARDIZED MORTALITY RATIOS FOR FIVE SOCIAL GROUPS[2]					
(high)	1	2	3	4	5	(low)
Infant mortality and stillbirth (age 0-1)	66	77	89	111	174	
Childhood mortality (age 1-14)	82	82	96	116	159	
Adult male mortality (age 15-64)	77	81	103	114	137	
(circulatory disease)	(86)	(89)	(108)	(110)	(118)	
(cancer)	(75)	(80)	(102)	(116)	(131)	
(respiratory disease)	(37)	(53)	(93)	(123)	(187)	
(violent deaths)	(78)	(78)	(89)	(122)	(197)	

[1] Source: "Occupational Mortality, 1970-1972, England and Wales." Government Statistical Service, Her Majesty's Stationery Office, London (1978).
[2] Note: Where the income of the adult male varied from £44 per week average in social group 1 to £20 per week average in social group 5 in 1970-1972. The average mortality ratio for all persons in each horizontal line is 100.

Though overall death rates have declined dramatically in recent decades, there has been no improvement for adult males. Could this have come about because the physical environment has become more harmful to men? Yes, it could. But this is the same external environment in which live women whose life expectancy has substantially increased. The more likely explanation is that the special style of life lived by men—eating, sleeping, working, worrying—differs from women's. In explaining how his statement that two-thirds of all cancers were environmental (and therefore possibly preventable) has been misinterpreted, for instance, John Higginson, the director and founder of the World Health Organization's cancer-research unit, said that he meant "the *total* environment, cultural as well as chemical. By cultural," he continued, "I meant mode of life." Now that women are working outside the home and smoking and drinking more (welcome to the world of men!), we will see whether these regrettable differences in adult mortality are maintained.

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The conclusion stares us in the face: If health and wealth are positively related, sacrificing one for the other may not only lead to less wealth but also to less health.

The "hidden hand" in safety

How, we may well ask, did the United States become a safer place to live in the past century without anyone directly intending to achieve that result? With the partial exception of the sanitation and public-health movement, there was no department of safety, no one in charge of seeing that Americans lived safer lives. The small moves in this direction, such as meat inspection and housing regulations at the local level, possibly raised prices but they certainly are not responsible for the vast improvement of housing or food. Whatever was done, was done indirectly—on the basis of other considerations, with safety a byproduct or a result of decisions made on quite different grounds.

Is it conceivable that risk may be reduced and safety increased by actions in no way intended to achieve that effect? As a general proposition, unintended consequences are a staple of social life, just as finding one thing when looking for another is a staple of science. Our actions are intended to achieve direct consequences, but that does not mean they may not achieve unintended ones as well. That individual action is based on intention does not necessarily signify that society is a product of design. If we think of social life as an extraordinary chain of complex adjustments, each action ramifying in innumerable directions, bumping into others unforeseen, causing consequences described as sixth- and seventh- and umpteenth-order effects, all the while adjusting to the latest development, it may not seem surprising that no one is fully in touch with what is happening. Indeed, the connection between initial causes and subsequent effects may have become so attenuated, crisscrossed as it has been by so many other forces, that no one can be quite certain what has become of it. Admitting all of the limitations of inferring causality, it is still possible to provide illustrations of how actions that did not have safety in mind nevertheless appear to have helped increase it.

So far as I am aware, the great industrial revolution that led to (or was produced by) the mechanization of agriculture was not designed by anyone to improve the health and safety of the general population. Yet the extraordinary improvement in diet that resulted from cheaper and more plentiful food, which was a major con-

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sequence of mechanization, has done much to improve health and life expectancy and also to reduce accidents. Since inputs determine outputs, it is perhaps not necessary to explain in detail why nutrition is related to health and life expectancy. Even overeating and other abuses of plentiful food do not denigrate health to anywhere near the extent it has been improved for almost everyone in society. Better food, with more calories and protein, undoubtedly also increases alertness, which helps prevent accidents. Good nutrition also improves education, which enables people to learn and therefore to avoid some of the more disagreeable situations that lead to premature death or unfortunate accidents.

The more capital per unit of production, the less labor, and the less labor the fewer the accidents. As far as anyone knows, most accidents in the workplace are related to something a worker has or has not done. The best laborers there are per unit of output, and the less hand-manipulation in which they engage, the safer they are. Though machines are often dangerous, they are less dangerous to fewer workers than if similar efforts were engaged in under more primitive conditions by more people. The shorter the work day, moreover, the less tired the worker, the fewer the accidents, the greater the longevity. While hard labor is no doubt good for all of us in moderation, extreme amounts over long periods of time are deleterious.

The higher the level of economic activity, the larger and more varied are the alternatives pursued. Though the rates of failure are high, so are rates of initiation. Diversity flourishes. Many more alternatives for doing things are tried in different contexts than would be attempted by any one person or any one organization. Thus there is a high probability that devices, processes, and practices will be tried that do, in fact, increase safety—though they were not intended to do so.

Unintended consequences are litmus-like. Attitudes toward them distinguish among social theorists. Those who fear disorder speak of destructive contradictions, as if anything unplanned were illegitimate. Those who value spontaneity speak of serendipity, as if the best discoveries were those you were not looking for. A by-product of this division is that theorists who fear disorder demand that good be intended, while theorists of spontaneity think of the good as a surprising discovery. If not aiming avowedly at the good (e.g., reduction of risk) were *ipso facto* bad, we might better be able to understand the predilection that every evil have a specific remedy. For just as sin creates the opportunity for repentance, the more evils

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that may be discovered, the more virtue may be displayed in guarding against them.

The parts versus the whole

Were it true that pursuing our paltry pleasures increases death and desolation for other human beings, the moral argument would be over before it began. The proper perspective is: How much safety can come from measures to reduce hazard for particular populations, and how much from overall improvement in the standard of living? Can we improve the whole by giving each part a veto over change?

In a different era, John Von Neuman postulated the possibility that the whole might be made more reliable than the parts. Though any particular part might fail, there would be a sufficient number and variety of alternatives so that the system as a whole had a higher probability of performing than did any of its constituent elements. American society appears to be moving in the opposite direction by seeking to insure each part against failure. Can the parts be made stronger, we may ask, by weakening the whole?

What are the consequences of removing the risks from the parts? Recall the dilemma that faced Consolidated Edison before the New York City blackout of 1977. There were not one but two potential problems: Reducing the risk the entire city would be blacked out meant increasing the risk a single neighborhood would have to do without. The greater the willingness to "dump" loads by blacking out a neighborhood, the less the likelihood the entire city would be overloaded and break down. The safety of the whole is a function of the willingness to sacrifice a part, the particular part being unknown, and the occasion unforeseen. If there is unwillingness to risk a shutdown in any specific site, as events proved, the city system itself may be jeopardized.

The recent history of environmental impact statements, for present purposes, may be read as saying that the values being protected by each part should remain constant. The environment is to remain inviolable and the economy is to vary to suit it. No problem, at least not much. But when one adds health, safety, employment, inflation, urban, rural, and other impact statements, the world of public policy is in danger of becoming one of all constants and no variables.

Of course, the parts may also contribute positively to the whole. Safety features found efficacious in one area may be adopted in others to their mutual betterment. But this risk reduction depends on

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reinforcing redundancy by increasing diversity. The reliability essential for safety is enhanced when, as in a submarine, there are numerous systems capable of replacing those that, for whatever reason, break down. This duplication depends on having sufficient resources to add additional units and sufficient diversity to create new approaches. Imposing innumerable, similar safeguards on the parts, however, inhibits either accumulating resources or trying out unauthorized alternatives. Since none is allowed to suffer as a first-order effect, none takes on the task of accommodation to changing circumstance. The whole contributes uniformity, the parts rigidity. Thus the ability to pass learning on to others, or discover new configurations which can be imitated, or respond to unforeseen events, is diminished.

When the price of oil goes sky high and its availability is in doubt, for example, what can government do without impinging upon the economy or the environment or inflation or health? Not much. After the multiple price increases of 1973, the price of oil was controlled; evidently, poor people should not be asked to pay, so no one paid the real cost. The import of oil was subsidized at the same time the inviolability of the environment became an important value. So did health and safety. The cost of new sources of energy increased as did the time to complete these facilities. Risk was retarded for some people, but so was growth of supply for all. The energy system was rendered less capable and less flexible. Imports doubled between 1973 and 1979, but reserves declined. What, we may well ask, has been the consequence for energy policy of trying to protect everyone from everything? First, a huge synthetics program, not only dearer but dirtier than anything now going. Second, a new bureaucracy whose sole purpose is to override all the other risk-reduction routines previously introduced. A central authority, hitherto unknown and unnecessary, rides roughshod over risk. Instead of evolution or devolution, there is only resolution by central command.

Suppose every subgroup in society—farmers, workers, old people, youngsters, on and on—were guaranteed against risk. No matter what happened their safety would have to be secure. Who then would pay penalties? Presumably, risks would have to be allocated over the remainder. But if there were no one left, how would shocks be absorbed? How could risks be run to increase the national product if losses could not be assigned to anyone? Since the social system would cease adapting, the evolutionary implications of removing risk are horrendous.

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Until now, social risk reduction has been an indirect process; hence it has not been possible to predict who will be protected against what at which time. This is highly desirable. Everyone has to take his chances. Everyone can hope to share in general risk reduction, but no one can hope to protect himself in a particular way. But once risk reduction becomes a decision instead of a result, a deadly process is put into effect, by which individual or group safety is bought at the expense of the whole.

The killing question: "Who shall be saved?"

Individual interest in taking risks hardly appears to have declined. Many will not, for instance, buy flood insurance, though they might well be wiped out. Organizations of all kinds exist to satisfy the desire for the strenuous life. If all individual effort to increase personal safety were added up, it would hardly be greater now than it was in times past. What is new is that the *collective* urge to risk reduction is so much greater than the sum of the individual urges it claims to represent. Each of us would do less for ourselves than we would insist the government do for us. The place to look for an explanation is not in private motives, but in the perception of the possibilities of public policy.

Public spending on safety for particular people would exceed, I believe, any conceivable estimate of private benefits. Let us recall how this happens. Personal benefits are palpable, but public costs are diffused over anonymous taxpayers and consumers who hardly know they are paying the bill. Consequently, costs are never internalized. But realizing that the payers and the receivers are not necessarily the same is only the beginning of the explanation.

Suppose we ask the innocent sounding question: "How much safety is enough?" The answer is that there can never be enough. The possibilities of risk reduction are virtually infinite. Where the principle is that everything that is technically possible to be done, should be done, the only limits are physical. Even there, though, limits may be illusory. Every part of a mechanism can fail; every substance is a potential carcinogen when combined with others as yet unknown. Someone might be saved by more frequent inspections of more parts. Where the only principle is perfection ("Don't Be Half-Safe!"), there is always more to be done.

Suppose life expectancy were expressly allocated by government: How much should be spent on all lives together? No doubt a huge amount. But since other purposes must also be served by govern-

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ment, there would be a form of resource allocation. But if the question were rephrased to ask how much should be spent on you or me, the only answer could be "everything," for to ourselves and our loved ones, we are precious and irreplaceable and priceless—i.e., of infinite worth. So long as we do not pay directly, we would almost always be foolhardy not to take this or that precaution, no matter how expensive. Divorced from any consideration of alternative uses —that is from our fellow human beings—each of us is likely to demand much more of government than we would allocate to an individual's safety were we the government with the responsibility of deciding for all.

If they are permitted to proliferate, direct demands for reduction of risk group-by-group, case-by-case, are inexorable. For one thing, the politics of anticipation requires that all possible sources of risk be eliminated or mitigated. Since these sources are virtually infinite in number, subject only to the fertility of the imagination, there is no limit on what can be spent on them. For another, there is no principled reason why risks that affect certain groups should be reduced while those potentially affecting other groups are not. Accommodation by logrolling will lead to the usual coalition of minorities. The result will be more "safety" than anyone would choose to buy.

By now it should be clear that I believe a case-by-case approach will not reduce risks, but merely redistribute them in ways not yet foreseen. What will be increased is not safety but subsidy. Each item may reflect what the people involved would want others to spend on them, but the total of all items is bound to be more than citizens would want to spend or legislators to vote were they to consider all such activities together. Individual choice is at odds with collective rationality. As inconsistencies among cases accumulate, moreover, we can expect them to be resolved in accord with current practice for entitlements—that is, by upgrading the lowest category of benefits to the highest level and overlapping categories of eligible people so that none who might be deserving are left out. Cascading cost increases are the inevitable result, increases that, were they left in the private economy, might well have superior effects in increasing safety, especially for people of lower income.

The greater the effort to reduce risk, moreover, the less equally risk is distributed among the population. At the outset, the idea is that people who lead less risky lives will subsidize those who live more risky lives, so the two groups will grow toward each other in safety. In order to achieve this result, however, the original

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asymmetry in risk must be maintained. Once the process of direct risk reduction for specific groups is initiated, however, benefits (and beneficiaries) expand by well-known devices. Those who enjoy benefits succeed in raising them by forming coalitions with others, and those originally left out get in on a good thing. Either way, the initial safety programs are bound to grow larger as are the proportion of the people they cover. Hence, as the population of recipients comes to resemble the people who pay, the reduction of inequality in risk is bound to decline.

Life and health are precious to all of us. So long as the debate over safety is about removing risks, the outcome will continue to be unbalanced. If it is the country that must continue, rather than just you or me, some of us must still take risks. Is it better, then, for government to allocate these risks directly, or are we better off, when choosing the rules under which we must live, if future failures are unknown? That question is what the debate on risk is about.

Congress is not the right forum, in my opinion, to discuss the techniques of risk-benefit analysis, whose terms of discourse are always changing and whose outcomes are subject to innumerable special circumstances. It is a technical issue in the sense that its operations are subject to broader principles. Congress is the right arena to discuss the grand principles of risk and safety. Congressmen are also the right people to estimate how the political process will affect legislation on safety group-by-group and case-by-case.

If one might be allowed to distinguish between "macro" and "micro" risk assessment, Congress should be interested in the larger rather than the smaller side of safety questions. Its "knowledge principle" might be that understanding safety is a prerequisite for coping with risk. Its political principles might be taken from its experience—with tariffs, price supports, disaster insurance, and a host of activities designed to reduce risk for particular people—that it is easy to get in but hard to get out, and that what to do is less important a question than whether to do it at all. Every step is desirable, but all the steps taken together are undesirable—too much is spent on too few to do too little.

Knowing what will happen, Congressmen can protect the nation (and themselves) from exhaustion by anticipation. Unless they take steps to prevent themselves from determining who will undergo risk and who won't, group-by-group, risk-by-risk, the nation will surely be less safe than it was. Everyman may not always understand why seeking safety increases risk but knowing themselves

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and their colleagues, Congressmen do. They should share this self-understanding with their fellow citizens.

Resilience or anticipation?

Isn't it possible that risk-reducers are right at least some of the time? They must be. No one can observe the technology of our times without wondering whether there may not be hidden flaws that will eventually, to our dismay, reveal themselves.

Consider the costs of prediction associated with what Bertrand de Jouvenel calls "the railroad track": A pattern has always obtained in the past and therefore projecting it is reasonable, but it leads to absurd consequences just the same, because somewhere along the track the same pattern sets off a systemic reaction which had never occurred before (for whatever reasons that may be specific to the subject being examined). Alternatively, the pattern that has always obtained in the past was the function of a social given (as in population dynamics) and the "law of large numbers," instead of being an absolute law, was just associated with that particular pattern. What happens when the pattern changes because of some changes in the society?

Is it absurd to imagine a curvilinear instead of a linear relationship between wealth and safety? So far it has been linear. Is it impossible that the cumulative result of radical environmental changes (some of which we will not see for 50 or 100 years) amounts to a vector which bends the curve? In the interest of not prematurely foreclosing choice, it makes sense to play with this notion.

Suppose it is so. Suppose that something we have neglected turns out to be important and dangerous. Suppose, fearing just this eventuality, government seeks to protect the people against the possibility of harm from this source. Even so, granted all these suppositions, I still think resilience will afford better protection than anticipation. How, to begin, would government know which of an infinity of evils would manifest itself? Many, which appear dangerous, would really be benign. Others may actually be a little dangerous but the consequences of trying to anticipate them may be much worse than letting them run their course. The most likely eventuality by far, I believe, is that whatever happens will be unexpected. Wouldn't we be better off increasing our capacity to respond, our resiliency, than dissipating our strength in a futile effort to ward off we-know-not-what?

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Would it not make sense to anticipate so as to avoid global catastrophic risks? Indeed it would. (And, indeed, put in its platitudinous place, this is presumably what everyone who does not wish to commit suicide has been trying to do.) But when "catastrophe" becomes common, priorities among the potentially preventable have to be established or else there will be few resources left to respond resiliently to the unexpected. Knowing so little about whether the risk will materialize, we are in as much danger of harming as helping. Talking about "catastrophic" risks is not the same as identifying them, or knowing what to do about them once identified.

The big bugaboo is irreversibility: Only an idiot would subject himself or his life-support systems to irreversible damage. This is true, but is it meaningful? If the criterion of irreversibility suggests avoiding fatal errors, it is hardly enlightening. If it suggests avoiding errors altogether, it is stultifying. How would we learn without making mistakes? How could adaptation take place if some behaviors and organisms do not die? Is it being suggested that everything live forever? Unless irreversibility has become a disguise for immortality, neither everything nor everyone can survive.

Stability, ecologists tell us, is not a good bet for safety. Without experience in overcoming a variety of disturbances, organisms are likely to adapt to a steady state. When dramatic change does occur, these organisms are likely to perish—both because the search for stability has used up surplus resources, and because they have suppressed their capacity to cope with the unexpected. If the safety movement is about survival, increasing and improving a general capacity—human intelligence, scientific knowledge, technical ability, diversity of experience—to respond resiliently best aims at that result. There may be a better single measure of this capacity than economic growth, but if so, I am not aware of it.

If you and I want to go rock climbing, thus voluntarily exposing ourselves to greater risks, that's our business and that is all right. But if the air contains coal dust or food contains conceivable carcinogens, that is now said to be wrong, because the risk is involuntary; therefore, it is the government's business to get rid of it. At first blush, the distinction appears eminently reasonable; yes, there are risks additional to daily living that may be voluntarily assumed (though there are others, like climbing the outside of skyscrapers, that are prohibited). But are there truly such phenomena as "involuntary risks"? There are, of course, risks that are

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unknown. People may and do endanger themselves (and, possibly, those around them) without realizing that what they are doing (or that what is being done near them) is dangerous. The remedy, equally obviously, is better information, in which case people will either refuse the by-then-known risk or require added compensation for assuming it. Thus an involuntary risk due to ignorance is by knowledge converted into a voluntary one or no risk at all. Since anything and everything one does might be risky (perhaps, with greater understanding, an apple a day will prove unhealthy or exercise debilitating or breast feeding poisonous or showers ennervating), unknown risks cannot be called "involuntary" without making life into one long involuntary risk.

There are no doubt risks we would rather not run but which we undertake in order to gain other benefits. One may, and many do, live in Los Angeles, for example, not for the privilege of breathing in smog but in order to take advantage of its natural beauty, warm climate, job opportunities, and so on. Life's choices, after all, often come in bundles of goods and bads, which have to be taken whole. As the song says, "You can't have one without the other." There is no sense in acting as if one can pick the eyes out of the potato of life, making entirely discrete choices, when it comes all tied up, the bad with the good inextricably mixed.

In what sense can the risk that comes with the reward be called "involuntary"? Unwanted it may be, like potato peel in french fries, but necessary it is. Unless there is compulsion involved—one knows the risk but is forced to take it—the term "involuntary" would appear to be inappropriate.

Yet, just as people's life chances are hardly equal, we know that some people face greater risks than others. Poorer people, on the average, are sicker than rich, die earlier, have more accidents. Can we say, then, that classes of people who incur greater risk in the ordinary course of their lives, incur them involuntarily? If a person would rather risk an industrial accident, or accept a degree of pollution, than be unemployed, is that involuntary? In the sense that people would rather things were otherwise, that they were rich or beautiful, the risks they face may be against their will. To be sure, even this degree of compulsion could be debated, but we have come far enough to see what is at stake: Either involuntary risk is a socially empty category or it is a complaint against the social system that some people have harder times in life, reflected in risk, than do others more fortunate.

The debate over risk may have much less to do with physical

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than with moral and social fears. Economic growth may be identified with huge impersonal structures that depersonalize human relationships and centralize political power. To the extent we are confronted with opposing world views, however, this does not necessarily imply, as some suppose, that nothing more can be said. Empirical questions can still be raised of whether values such as personal autonomy and social reciprocity would in fact be enhanced by governmental mandates to reduce risk. I doubt it. Here I have argued that the manifest function of improving physical safety is unlikely to be achieved. Others may want to ask whether love and work are likely to be more satisfying in a system that cannot tolerate error.

We should be worried, it is said, because we know so much more. In the past, however, knowledge was considered conducive to control, not collapse. When potential carcinogens are not found in parts per million, it may be possible to go to parts per trillion and beyond—just to make sure. Eventually we may achieve the ultimate "gefilte fish effect" in which the tiniest fleck, sufficiently disaggregated, may contain each and every substance known to mankind. This is not using knowledge to make us free, but to make us slaves to self-induced fears.

Putting it positively

Let me put my position positively: Instead of focusing all our attention on risk, effort should also be devoted to understanding how and why we have become safer than our predecessors. Instead of assuming that risk may be reduced only by direct action, we should consider whether indirect action stemming from economic growth may not be more efficacious. What would a 1- to 3-percent increase in economic growth do for life expectancy and accident prevention as compared with the safety measures now contemplated?

Am I not aware that there are current dangers against which immediate action may be required? Yes, but if we were talking about current dangers there would be very little discussion. If we know what is coming, and it is awful, and we know how to stop or deflect it, and doing so won't make things worse than leaving it alone, let's stop it! However, if the country is being asked to ward off dangers only dimly perceived, whose effects, if they occur, will not be felt for long periods, then it is only reasonable to counter such exhortations by pointing to the indirect effects of the

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opportunities missed to improve safety in ways that are as yet unforeseen.

Do I recommend laissez-faire? Only if that is the only alternative. But it is not. The dice should be loaded against any "right" to protection against risk. Only if risks are palpable and remedies ascertainable and populations limitable and dangers unavoidable, should government regulate risk. "Killing people with kindness" is only a slightly subtle form of verbal aggression. Killing people with safety would be one of the supreme ironies of our time.

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The gas lines of '79

STEPHEN CHAPMAN

FASCINATION with conspiracies, real or imagined, appears to be an inherited American taste. Satanic conspiracies often figured prominently in the sermons of colonial New England ministers; later Satan was replaced by more worldly but no less malevolent agents. In his famous essay, "The Paranoid Style in American Politics," Richard Hofstadter noted that at various points in the Republic's history, dark conspiracies have been attributed to Masons, Catholics, slaveholders, international bankers, munitions manufacturers, and the House of Hapsburg. Hofstadter called such thinking "paranoid" because "no other word adequately evokes the qualities of heated exaggeration, suspiciousness, and conspiratorial fantasy I have in mind." It was the characteristic of the conspirator in each of these theories, wrote Hofstadter, that "[he] wills, indeed he manufactures, the mechanism of history himself, or deflects the normal course of history in an evil way. He makes crises, starts runs on banks, causes depressions, manufactures disasters, and then enjoys and profits from the misery he has produced."

Does that suspect description bring anyone to mind? Of course it does; the oil companies, objects of general suspicion and distrust ever since the Arab oil embargo of 1973-74, which coincided with a quadrupling of oil prices at the decree of the newly emergent

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Organization of Petroleum Exporting Countries. It was largely overlooked by various organs of the American news media, particularly the television networks, that Western-based petroleum firms had not been treated kindly in many of these nations, where ruling governments had discovered expropriation of foreign assets to be the path to social justice and national self-determination. What caught everyone's attention instead was the jump in oil-company profits that followed OPEC's seizure of control of the world oil market. The taxable income of all American oil firms, which was only $3.2 billion in 1972, rose to $6 billion in 1973 and $23.5 billion in 1974. In the same period the average return on shareholders' equity climbed from 10.8 percent to 19.6 percent. The popular reasoning was *post hoc, ergo propter hoc*: Inasmuch as the embargo, the emergence of OPEC, and shortages in the United States had been accompanied by startling increases in oil-company profits, those events must have been part of a carefully orchestrated scheme by the oil companies to increase their profits. The average American, not understanding complexities of international oil economics, substituted as explanation a cabal of pin-striped corporate moguls. And thus was born the most cherished of contemporary villains: Big Oil.

Even though oil-company profits settled back to levels comparable to those of most other American industries in the five years following the embargo, and even though the price of gasoline remained stable in real terms, the popular resentment of Big Oil simmered. Then in spring 1979, it boiled over once again. The reason was another gasoline shortage, complete with long lines, cursing motorists, and one or two homicides committed against drivers violating accepted queue etiquette. The shortage struck first in California, lingered a few weeks, and then vanished, only to reappear in Washington, D.C., having mysteriously bypassed all of the area in between. From there it made raids against several East Coast cities, and it was even spotted in what used to be the oil capital of the world—Houston, Texas. For a good three months the gasoline lines dominated the headlines and provided endless footage for the television news programs. What quickly became clear from numerous polls and hundreds of curbside interviews was that no one believed the official government explanation for the shortage—namely, a reduction in supplies from Iran. Everyone "knew" the real reason gasoline was so hard to find: The oil companies had gotten greedy once again and had manufactured a phony crisis to jack up prices and profits.

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The conspiracy theory

In no time at all, the belief that the shortage was purely fraudulent became an unchallenged article of popular faith. Given the unsavory reputation of the oil companies, this was not surprising. And the popular superstition rapidly gained credence among several established muckrakers in the nation's press, who were able to locate a few stray facts and statistics to provide a patina of intellectual respectability to the gut feelings of the public. The case against Big Oil has been made, with only slight variations, by several advocates, including Fred J. Cook of *The Nation*, Jack Anderson of *The Washington Post*, author Robert Sherrill in *The New York Times Magazine*, and several staff writers of *Newsday* in a long article condensed and reprinted in *Reader's Digest*. The conspiracy theory goes something like this: The halt in oil production by Iran last winter did not create a shortage of oil in the world because other countries more than made up the difference. World oil production actually *rose* in the first quarter of 1979. Nor was there any shortage of available crude oil in the United States, since imports of oil were higher than the previous year. If one includes oil stored in the Energy Department's Strategic Petroleum Reserve, the nation had the largest stocks of oil in history at the beginning of 1979. Supplies were hard to find only because the oil companies planned it that way. While Iran's oil fields were lying fallow, American producers cut production substantially and refiners slowed their production of gasoline by running at less than capacity. While the nation was suffering long gasoline lines, the oil companies were increasing *exports* of oil. In conclusion, there was, in Anderson's words, "a conspiracy by the oil companies to extract huge profits from the American public's belief in a shortage that was in fact a phantom."

This conclusion is utterly mistaken, to judge from all reliable evidence. In fact the very statistics cited by those who suspect a gigantic fraud, when examined more than superficially, suggest precisely the opposite conclusion—that the shortage was in fact real, that the oil companies were not to blame, and that the crisis was aggravated by the very people at the Department of Energy who were supposed to alleviate it.

The increase in American imports of oil during the first half of 1979 is the most incriminating piece of evidence offered by the prosecution. It is also the most misleading. It is true that in each of the months from January through June, imports of crude (excluding those designated for the strategic reserve) were at least

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200,000 barrels per day higher than in the corresponding month of 1978—an increase of about 3 percent. *But the reason 1979 imports were higher than in 1978 is that imports in 1978 were abnormally low.* To understand why one must go back all the way to the winter of 1976-77, one of the coldest winters in modern history, which caught many heating oil suppliers short. In the latter part of 1977, the oil companies stockpiled huge inventories of crude oil and refined products. This hoarding reflected three factors: normal precautions against another unusually cold winter; the expectation of a nationwide coal strike that would increase the demand for other fuels (and which did happen); and the anticipation of an increase in the price of OPEC oil (which did not). As a result, stocks of crude in January were extraordinarily high—nearly 14 percent higher than the previous January. Storing crude oil is expensive, so the oil companies spent most of the rest of 1978 drawing on their bloated inventories, which meant they imported less oil. In April 1977, for example, the nation imported an average of 8.7 million barrels per day; the following April imports were only 7.4 million barrels per day, a decline of nearly 15 percent. Only in September did imports finally regain the previous year's level. But during these months the demand for oil products continued to grow at a predictable rate. By the end of the summer crude stocks were back down to normal levels. But the fall proved to be unusually warm, stimulating Americans to drive more than they normally would. Demand for gasoline in the months of September, October, and November was 3.3 percent higher than in the same period of 1977. By January crude stocks, depleted somewhat by this surge in demand, stood at 303 million barrels, only 3 percent higher than two years before.

In normal times those inventories could have been rebuilt without any problem. But 1979, it turned out, was no normal year. On December 27, an oil-workers strike shut down Iran's production, which would not resume for more than two months. Total world oil production dipped from 62.1 million barrels per day in December to 59.7 million in January. More important for American drivers, U.S. imports of oil fell from an average of 8.9 million barrels per day in December to 8.3 million in February and remained low, bottoming out at 7.7 million in April—down 13 percent from December. It is true that imports remained above those of the previous year throughout the first half of 1979—about 5 percent above. But that was not enough to make up for the depleted inventories and the natural increase in demand. What is important is the total avail-

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able supplies of oil in its various forms, not merely the level of imports. The Energy Department, in a July report exonerating the oil companies, calculated that there was only 95 percent as much petroleum available from February to May as in the same period of 1978.

One mistake made by the conspiracy theorists is including oil in the Strategic Petroleum Reserve in calculations of total stocks. It is true that the nation's crude stocks, including the reserve, were not unusually low but rather the highest in history. But the oil stored in the reserve might as well not have existed, for all the good it might have done. The Energy Department unfortunately pumped the oil into underground caverns and salt domes without installing equipment to get it back out. So the oil was of no use. Excluding the reserve, the nation's stocks of crude in January were below the level the Energy Department regarded as the acceptable minimum. There was no room for a disruption in the flow of oil from abroad. But a disruption is what happened.

Rationing by wait

The loss of supplies from Iran would have caused fewer problems if, as is claimed, demand in the United States had declined in the first half of 1979. In fact, this is not quite the truth. Gasoline consumption in January and February was higher than in the same two months of 1978, and fell off only in March and April. Normally a drop in consumption is the same thing as a drop in demand—demand being the amount of a product consumers will buy at a given price. But in this case there was less gasoline available than consumers wanted at the established price. In a normal market the price would have risen to the point where demand was equal to the available supply. But gasoline prices were—and are—regulated by the government to prevent them from rising in this fashion. So instead of rationing gasoline according to who is willing to *pay* for it, the government forced service stations to ration it according to who was willing to *wait* for it—hence the long lines. Consumption did drop in March and April, but only because there was less gasoline available than consumers wanted to buy.

So oil refiners found themselves in a bind. On the one hand, demand for gasoline was increasing—but inventories were low and the needed supplies of imported oil simply weren't there. One source of crude during the shortage was the spot market, where a small portion of the world's oil is sold at whatever price is bid on a given day (unlike most sales, which are made under long-term

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contracts). But the Energy Department exhorted the oil companies not to buy on the spot market, in the hope that such restraint would hold down the soaring spot prices. The Department of Energy got its way. American refiners mostly stayed out of the spot market. But prices continued to climb anyway, and in May DOE finally told them to go ahead and get whatever they could. By this time it was too late to do much good.

Several other statistics are crucial to the argument that the shortage was privately contrived. One is that U.S. domestic crude production fell during the very period when Iran's oil fields were producing nothing. Energy Department statistics show that U.S. output fell from 8.8 million barrels per day in October to 8.5 million in February. There is nothing mysterious about this decline. American oil production normally peaks in the summer or fall and declines in the winter, due to hindrances imposed by bad weather. During the same period in 1977-78, American wells reduced their output by 200,000 barrels per day. The decline in the winter of 1978-79 was slightly larger, but not so much as to make much difference. In fact, production in both January and February of 1979 was higher than in the same months of 1978—even though U.S. oil production has declined steadily since 1970, when it reached an all-time high of 9.6 million barrels per day. If anything, the production in the winter of 1978-79 was surprisingly high.

It is also true that U.S. refineries operated at less than full capacity in the first six months of 1979. This is taken as additional proof that oil companies were doing their best to keep supplies of gasoline off the market. But in fact one can reasonably assume that the slowdown in refinery operations (from 91 percent in November—which is regarded as the maximum—to 83 percent in March) was a natural precautionary reaction to the loss of supplies from Iran. Refiners worried about getting supplies of crude had to be careful to keep adequate inventories on hand, particularly with the practical ban on spot-market purchases. Otherwise they ran the risk of having to shut down completely, which requires halting production for as long as two weeks before the refinery can resume normal production. This is a very expensive process. It is considerably cheaper to run slightly below capacity continuously than to run at full capacity for a couple of weeks and then shut down for another couple of weeks before starting up again. Of course by the spring the refiners' fears had been realized: Crude was hard to find and they could not have operated at peak capacity in any case. (This is also normally the time for routine preventive main-

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tenance, which also reduces output.) It is getting things backward to suggest that lower operating rates reflected an attempt to create a shortage. The refineries had to run at less than capacity because there was already a shortage.

The charge that American oil companies actually exported more oil during the shortage than in the previous year is accurate. It is also meaningless. Total exports are trivial in volume—1 or 2 percent of total U.S. consumption. And in any case, virtually the only exports allowed by U.S. law are barrel-for-barrel exchanges of different types of crude oil or refined products—in other words, exports that do not reduce the nation's supply of oil.

So one is left to conclude that the gasoline shortage was not somehow contrived by the nation's oil companies. How then does one explain it? There can be no doubt that the upheaval in Iran was the root cause. But the primary effect of the revolution and the accompanying halt in oil production was not to reduce available supplies in the world, though it did that briefly, but to increase worldwide *demand* for oil. After Iran stopped producing, everyone expected a shortage, so everyone—refiners, middlemen, speculators, and governments—began buying up every available barrel of oil. Even after Iran began exporting oil again (at less than half the level of the previous year), its turbulent political climate created widespread worry that it might cut off production again—or worse, that its Islamic revolution might stir up political trouble in other Arab oil-producing countries. The reason spot-market prices rose so high was that buyers of all sorts were stockpiling crude oil against the possibility of more upheavals in the Middle East—rather like people rushing to the grocery store upon hearing forecasts of heavy snow. As it turned out, oil production in the Middle East remained reasonably stable for the rest of the year, which meant all the stockpiling wasn't really necessary. But it would have been seen as a smart policy if Iran had quit exporting again, or if Colonel Qaddafi had carried out his threat to cease producing for a few years, or if the Saudi monarchy had been overthrown. If there are wars or revolutions in the Middle East in 1980, stockpiling may yet be vindicated.

The shortages of gasoline in some American cities owed something to the same kind of panic psychology. One reason service stations were short of gasoline was that drivers were, in effect, stockpiling it—in their fuel tanks. It was reported during the shortage in California, for example, that the average credit card purchase of gasoline amounted to only three dollars. The Energy De-

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partment aggravated anxiety among drivers by issuing frequent apocalyptic warnings, and among oil company executives, by warning that refiners would have to begin shifting production to heating oil earlier than usual (normally this shift takes place around the end of July) to protect against a possible shortage of heating oil in the coming winter. (This protected the President in February's New Hampshire primary.) As a result refiners had to keep their inventories of gasoline higher than they might have otherwise, to make sure they would have enough to last through the summer and fall driving seasons.

Making the uncomfortable unmanageable

But it nonetheless appears clear that there was simply less gasoline around than people wanted. The Energy Department estimates, rather roughly, that imports of oil were about 800,000 barrels a day less than was needed to keep supplies at their 1978 level. In other words, the nation had only about 95 percent as much oil on hand during the shortage as it had had the previous year—an uncomfortable situation, but not an unmanageable one. What made the shortage unmanageable was the Energy Department.

The gasoline lines owed their existence mainly to the government allocation system, which dictated where, and in what quantity, supplies of gasoline would go. The allocation rules effectively freeze supply patterns by requiring that all dealers supplied by a refiner receive the same percentage of gasoline. If a refiner is shipping only 80 percent of what he shipped the previous year, then he has to provide each dealer with 80 percent of the supplies he received at a particular point in the past. At first, DOE's allocations were based on supply figures for 1972. So a station whose business had been cut in half in those seven years would receive the same allocation as one whose business had doubled. Later DOE changed the base period to 1978, which brought allocations a little closer to current patterns of consumption but still made no allowances for stations—or cities—whose gasoline needs had risen in the intervening year. In places, such as urban areas, where the population has been growing, the allocations provided too little gasoline. In places where it has been declining, such as rural areas, it provided too much. In addition, the allocation rules channeled gasoline to where it had been consumed in past, normal years—for example, resort areas. But fears of being stranded kept vaca-

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tioners away from those places, where the gasoline was plentiful, and at home, where it wasn't.

There is another reason that network camera crews found no gasoline lines in small towns in Kansas or Texas. Under the DOE allocation system, farmers were designated as "priority users" (as were state governments, hospitals, and a few other types of consumers). These priority users were guaranteed all their "current requirements" of gasoline, which meant they got as much as they wanted. Unfortunately, there was no way to tell if farmers were getting more gasoline than they actually needed—i.e., stockpiling—or if they were using in the family car fuel meant for farming. A July 24 report by the Energy Department concluded ruefully that "some priority users took advantage of their priority status to obtain more gasoline than needed, resulting in larger shortages for others."

The special treatment of "priority users" also explains why a 5-percent shortage translated into cutbacks of 15 to 25 percent in the amount of gasoline supplied to dealers. Before they could make their shipments to dealers, refiners first had to provide priority users with all the gasoline they wanted. Only then could they calculate how much to supply to ordinary drivers. In practice, about 15 percent of the available gasoline went to these privileged buyers.

The allocation system was needed only because of the price controls on gasoline. In a normal market, supplies would have been divided according to who was willing to pay the most—in other words, by demand. The price controls foreclosed this sort of bidding. Dealers had no incentive to bid for gasoline because they couldn't increase their prices above a certain fixed level anyway. Without the allocation rules, refiners might have simply cut off everyone but their own brand-name stations. The rules, one should note, are not designed to protect consumers. They are designed to protect dealers by guaranteeing them access to supplies.

The crucial fallacy in the conspiracy theory is assuming that if oil-company profits rise, then oil companies must have simply decided to raise them. But if the oil companies can effectively control the market for oil products, why didn't they move sooner to increase their profits? Between 1974 and 1978 the real price of gasoline in the United States actually declined slightly. If the oil companies had the stranglehold on American consumers suggested by Cook, Anderson, et al., then clearly they would not have tolerated this state of affairs. The gasoline shortage obviously did prove profitable for oil producers. The 25 leading American com-

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panies enjoyed a 74-percent increase in profits in the first nine months of 1979 over the previous year. The previous year, however, was not a particularly good one. Earnings of the top 25 companies were 22 percent lower in real terms than in 1974. The gas lines here did increase earnings by making it possible to charge higher gasoline prices (insofar as the price controls allowed), which increased the profit margin on each gallon sold. The sharp increase in world oil prices also raised the value of oil company inventories and reserves of crude oil. But most of the higher earnings came from foreign operations and thus had nothing to do with the shortage here.

The gasoline shortage was not the product of a conspiracy. It grew out of several factors—the revolution in Iran, the panic buying that followed it, and the federal government's mismanagement of the subsequent reduction in oil supplies. The pattern closely resembles the first shortage in the winter of 1973-74. And the pattern of the next shortage will be roughly the same.

There is little our government can do to prevent Arab populations from overthrowing their governments, or to prevent such upheavals from throwing the world oil market into disarray. But it can act to avoid the gasoline lines caused by its own price controls and allocations. So far, though, Congress and the President alike have insisted on keeping both, which means that the next disruption in the world oil trade is guaranteed to create shortages and gasoline lines here at home. But that isn't a conspiracy. That's a government policy.

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Parkinson's Law revisited: war and the growth of American government

BRUCE D. PORTER

The rise in the total of those employed is governed by Parkinson's Law and would be much the same whether the volume of the work were to increase, diminish, or even disappear.

—C. Northcote Parkinson

When George Washington's first Administration was inaugurated in 1790, it functioned with nine simple executive units and approximately 1,000 employees. A century later, the 1891 census recorded that over 150,000 civilians were working in the Harrison Administration. During its first 100 years the American government had grown nearly 10 times as fast as the population. By 1979 the executive branch employed over 2,800,000 civil servants, divided among 12 cabinet departments, 59 independent agencies, and the several bureaus of the White House Executive Office. These administrative units in turn embraced nearly 1,000 major subunits. The Assistant Administrator for Water and Hazardous Materials of the Environmental Protection Agency presided over a staff larger than Washington's entire first Administration. When Jimmy Carter entered office, 1 in every 75 Americans was employed by the executive branch (compared with 1 per 463 in 1891, and 1 per 4,000 in 1790). This ratio was actually much smaller than in mid-year

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1945, when Roosevelt's wartime Administration reached a record peak of 3,816,310 persons.

Surprisingly little scholarly attention has been given to this trend, despite the fact that big government has emerged as a prominent political issue in the United States. The 1978 Congressional elections saw the issue surface in various guises: high taxes, excessive regulation, red tape, deficit spending, Civil Service pay and privileges, bureaucratic mismanagement and scandal, inefficiency and waste. Richard Nixon's assertion that "we are all Keynesians," was transformed suddenly into "we are all Lockeans," as candidates vied for the favor of what was viewed as a budget-trimming, tax-cutting, anti-government electorate. The trend continues unabated. Popular periodicals and books of all but the most liberal hue today malign the misdeeds of big government, and the issue will certainly be raised in future elections.

The prevailing political winds suggest it is high time to consider this most neglected problem in the literature of political science and organizational theory—why government grows. Substantial study has been devoted to the problem of why the bureaucratic method of organizing has proliferated in the last century, but little to the question of why specific bureaus tend to grow.[1] A wealth of research exists on the growth of business firms, but it offers little insight into the growth of government.[2] What few theories do exist have been neither well developed nor subjected to extensive scrutiny. The problem offers a fertile, largely unplowed field for inquiry.

This article will probe the fundamental causes behind the expansion of the American government. Three extant theories on the causes of the government's growth will be evaluated, and an alternative explanation will be advanced and defended. The indicator that will be used to measure the size of the bureaucracy is the number of civilian employees in the executive branch. There are, of course, other measures of the growth of government—increases in taxes, spending, regulations, paperwork, or programs—but only an increase in federal employment indicates expansion in the size of the administrative hierarchy itself. It is one of the simplest and most

[1] The questions are related, of course. The spread of bureaucracy as an organizing principle is known as bureaucratization. It has been studied by Henry Jacoby, Max Weber, Kenneth Boulding, James Q. Wilson, Thorstein Veblen, Anthony Downs, and Peter M. Blau, among others.

[2] Organizational theorists build their growth models around the concept that a firm will expand when impelled by considerations of profit, cost, revenue, survival in the market, etc. Clearly few of these factors apply to government agencies.

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common indicators of the size of government.[3] Only the executive branch is considered because the legislative and judicial branches are not organized bureaucratically and have distinctly different functions than the executive; the causes of their growth may be different also. Daniel P. Moynihan argues that their rapid growth in the past decade was largely an attempt to cope with the growing size and power of the executive branch. Despite the increase in their numbers, the employees of Congress and the federal judiciary currently constitute only 1 percent of total federal employment.

Parkinson's Law

The most popular theory about the cause of bureaucratic growth was put forward in 1955 by a British historian, C. Northcote Parkinson, in a satirical essay published anonymously in *The Economist*. Parkinson cites figures showing that the number of clerks and officials employed by the British Admiralty increased dramatically after World War I, even as the number of ships and sailors declined. The Colonial Office manifested a like pattern: From 1935 to 1954 its administrative staff more than quadrupled, despite the concurrent shrinking of the British Empire. Parkinson concludes that "the number of the officials and the quantity of the work are not related to each other at all." The bureaucracy expands not because of an increasing workload, but because each official seeks to have additional subordinates hired in order to hasten his own promotion. These subordinates in turn create work for each other according to the famous law: "Work expands so as to fill the time available for its completion." The burgeoning of officialdom is inexorable.

Despite its tongue-in-cheek tenor, Parkinson's Law has had an impressive impact, finding its way into corporate seminars, political speeches, college textbooks, and scholarly literature. Many general works on bureaucracy and organizational theory cite it without challenge or qualification as an explanation of the growth of government. In an era like the present, when the very words "bureaucracy" and "bureaucrat" are pejorative, Parkinson's hypothesis has great appeal. It is tempting to blame the size and wastefulness of the federal government on ambitious civil servants busy making work for one another, and it is not difficult to find examples in American govern-

[3] It is, for example, the measure used in "Parkinson's Law." Another common indicator is the budget. Logical errors result if the two are not distinguished, since employment may fall while government spending rises. From 1969 to 1976 the Republicans reduced by 180,000 the number of classified civil servants, but the budget nearly doubled.

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ment similar to the Admiralty and Colonial Office in Britain. One case is the Department of Agriculture. It employed 19,500 persons in 1920 when the farm population was approximately 31 million; by 1975 farm population had declined to under 9 million, but USDA employment had swollen to 121,000.

Civil servants may indeed make work for one another, but the notion that a bureaucracy contains *within itself* the impetus for steady expansion is not tenable. Public officials may be anxious to multiply subordinates, but they generally have only limited authority to do so. Anthony Downs in *Inside Bureaucracy* points out that a bureau cannot expand without resources obtainable only from policy makers outside the bureau. In the United States, Great Britain, and most other nations, the creation of new permanent positions is controlled by the appropriations power of the legislature or by a high-level policy body. Officials in the United States can present arguments in favor of growth before lawmakers, but final responsibility for expanding the bureaucracy does not rest with the bureaucrats.

Parkinson's Law maintains that a given bureau will grow at a fairly constant annual rate. This accords perfectly with the popular impression of Washington officialdom bloating larger each day than ever before, but it is an erroneous conception. The number of federal employees has declined significantly since the peak of the War in Vietnam and very substantially since VJ-Day. American history has witnessed occasional massive layoffs of federal workers, as well as periods during which the executive-branch payroll has slowly declined. Parkinson errs in assuming that a large increase in employment from one decade to another necessarily came about due to constant expansion; he fails to look at the actual record of what took place from year to year.

One of Parkinson's key conclusions is that administrative staffs increase even when workloads dwindle, the Colonial Office being a case in point. Bertram Gross in *The Managing of Organizations* challenges Parkinson's thesis, noting that he ignored the vast increases in welfare services provided by the Colonial Office after World War II, including many services connected with the transition to colonial independence. Parkinson overlooked the possibility of modifications in the tasks assigned to an agency. Legitimate workloads can increase even when an agency's legal sphere of action seems to be declining. In the case of the Department of Agriculture mentioned above, American agricultural output doubled between 1920 and 1975 despite the farm population's decline, and Congress assigned the Department numerous new responsibilities.

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This makes the nearly sixfold increase in its size somewhat more understandable. Parkinson's Law is a delightful and provocative satire, but it falls short of actually explaining why government grows.

The modernist explanation

There are other theories about the growth of government. The French political observer Jacques Ellul writes: "We must not condemn bureaucracy's expansion—its complexity is the mirror image of the nation's complexity and the diverse tasks entrusted to the state." This view is seconded by Anthony Downs, who argues that big government arose to provide the complex arbitration required by industrial society, to cope with the size of modern business corporations, and to regulate technology's increasingly pervasive role. A report of the National Manpower Council in 1964 asserted that many of the new responsibilities undertaken by government were necessitated or encouraged by scientific and technological innovation. Variations on this theme can be gleaned from the writings of Peter Blau, Kenneth Boulding, James Burnham, Bertram Gross, and Joseph Schumpeter. Boulding, for example, asserts that technological change and the advancement of capitalism invariably lead to administrative revolution throughout society. All organizations, including government, tend to become larger and more bureaucratic.

In brief, modern industrial society spawns big government. This is an inviting conclusion, given that every industrial nation possesses a large central bureaucracy. But the fact that both are always found together does not necessarily prove that industrialization was the prime mover behind governmental growth. Each may be the consequence of a third historical force. Certainly industrialization is not a necessary condition of governmental growth, for bureaucracy is booming in many less developed nations where industry and technology are still fledglings.

In the United States the independent regulatory agencies are the arm of government most obviously designed to cope with problems of industrialization. They constituted in 1970 only 1 percent of the federal payroll. If the National Science Foundation, NASA, the Department of Energy, and the Department of Transportation are added on the grounds that they handle problems nonexistent in 1900, the figure rises to just over 5 percent. The traditional cabinet departments also conduct regulatory activities and carry out many functions unheard of 50 years ago, but the degree to which this is so is not as great as might be supposed. Consider again the

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Department of Agriculture. Only a fraction of its expansion since 1920 can be attributed to the new demands of industrialized farming or scientific research. Its inspection corps has grown as national output has risen, the Forest Service has expanded because of increases in national forest acreage, and additional employees have been added to implement several new loan programs for farmers. USDA opened a public relations department, offered new marketing services, and took on the food stamp program, none of which was really a forced response to technological or industrial advances.

Finally, while modern technology does create some new tasks for government, it also facilitates its performance. A government agency that makes use of computers, dictation machines, electric typewriters, photocopying machines, telephones, telexes, and air transportation ought to be able to carry out its tasks with fewer employees than it would otherwise have needed.

Blaming the welfare state

A third theory, particularly popular with more conservative thinkers, would place the responsibility for the growth of government squarely on the shoulders of the welfare state. The federal government grows because of the public's ever-increasing demand for welfare services. The most succinct statement of this viewpoint is found in a recent article by Allan H. Meltzer and Scott F. Richard (*The Public Interest,* Summer 1978):

> Government continues to grow because there is a decisive difference between the political process and the market process. The market produces a distribution of income that is less equal than the distribution of votes. Consequently, those with the lowest income use the political process to increase their income. Politicians have an incentive to attract voters with incomes near the median by offering benefits that impose a net cost on those with incomes above the median.

Meltzer and Richard are careful to note that if redistribution goes so far that its negative effects on incentives and income begin to outweigh its marginal benefits to voters just below the median, the trend will reverse itself. That is why the poorer half did not confiscate and redistribute the wealth long ago. They conclude: "Although large government poses a threat to many of our freedoms, government grows in every society where the majority remains free to express its will."

The problem with this theory is that it completely fails to explain why huge bureaucracies have sprung up in the Soviet Union and

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Eastern Europe, why Imperial Germany had such a large bureaucracy, and Nazi Germany an even larger one. Nor does it account at all well for the historical growth of the American executive branch. It does not explain the steady growth of the federal government in the 19th century, nor the reasons why the executive branch grew so rapidly from the turn of the century until the New Deal that James M. Beck, a former U.S. Solicitor General, was led to publish *Our Wonderland of Bureaucracy: A Study of the Growth of Bureaucracy in the Federal Government, and Its Destructive Effect upon the Constitution* in May 1932, before FDR had even won the Presidency. The proportion of civil servants today occupied in providing social services of a welfare nature—the personnel of HEW, HUD, and the Community Services Administration—is only slightly over 6 percent. The Department of Labor, USDA, and the Veterans Administration also offer substantial social welfare services, but even if their *entire* personnel is included, the figure rises to only 18 percent. Any theory attempting to charge the bureaucracy's expansion to the policies of one sector of the government cannot explain why the growth has taken place virtually across the board. In addition, Meltzer and Richard offer an oversimplified model of American voting patterns. The Gallup Poll has consistently demonstrated that a substantial percentage of prosperous voters favor expanding welfare programs, and a small but not insignificant percentage of poorer citizens favor reducing them. The chain of links between the ballot box and the offering of new federal services is one that is lengthy, complex, and sometimes tenuous.

The authors complicate their argument by using two measures of governmental growth: taxes and federal employment. Social-welfare expenditures made up 51 percent of the national budget in 1975, and according to James L. Clayton, they have "now replaced defense spending as the major fiscal phenomenon of our era in terms both of magnitude and rate of increase." But James Q. Wilson points out that large increases in spending do not necessarily lead to proportional bureaucratic growth. Huge dollar quantities of transfer payments and grants-in-aid can be transacted by relatively small bureaus. In 1971, the 73,000 employees of the Social Security Administration—less than 3 percent of federal workers—transferred funds totalling $54 billion, a sizeable chunk of the whole budget. Welfare commitments may be the principal reason government spending is on the rise, but they are not the moving force behind administrative expansion.

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War and government growth

The growth of the American government was caused primarily by the nation's involvement in four major wars during the 20th century. This holds true not only for the departments and agencies directly concerned with waging wars, but for most other sectors of the government also. The wars had a revolutionary impact on U.S. public administration; if the conflicts had not taken place few units of the government would be as large as they are today. The contribution of other factors to the bureaucracy's expansion has been secondary.

Meltzer and Richard mention and quickly dismiss the possible influence of war on government growth:

> This argument was recently made by Arthur Schlesinger Jr. in *The Imperial Presidency,* although it can be found earlier in the radical press, and it is loosely connected with the Marxist notion that military spending is required for prosperity in the capitalist system. . . . [I]t is not true that government requires a war to grow.

Schlesinger's book is concerned with how the power of the Presidency has increased during wartime emergencies, not with the growth of federal employment or spending. As to the radical press and Marxist notions, if such is the final resting place of this theory, it deserves to be resurrected to respectability—for it is eminently defensible.

First it should be observed that the current size of the executive branch originated principally in the 20th century. The growth of the federal government during the 19th century was steady, but of little real magnitude compared to the increases which began in 1916. James Q. Wilson asserts that the first several decades of the bureaucracy's expansion can be attributed largely to the extension of routine tasks necessitated by the demographic and territorial enlargement of the nation. He notes that from 1816 to 1861 federal employment multiplied eightfold, but that 86 percent of the growth was in the Post Office Department. However, the picture begins to change following the Civil War. Though the postwar demobilization of soldiers and civilians was nearly total, soon after the war the government found itself for the first time deeply involved in veterans' compensation and pensions, and this added an administrative burden to the bureaucracy. By 1900 the Post Office Department constituted only 60 percent of federal employment, down from 83 percent before the war. War and Navy made up about a fifth of the bureaucracy, and the large size of the Treasury

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Department—the largest single cabinet department after the Post Office—must also be attributed partly to the nation's military efforts, since 70 percent of the budget was going to defense expenditures, veterans' benefits, and interest on wartime debts.

On the eve of the nation's entry into World War I, civilian employees of the executive branch numbered 391,000. It was a modest bureaucracy by contemporary standards. From 1916 to 1976 the government experienced four rapid and intense growth spurts, coinciding respectively with World War I, World War II, the Korean War, and the War in Vietnam. During those 60 years, 2.45 million permanent positions were added to the executive branch payroll. Four-fifths of the total—1.95 million slots—were created during wartime. These figures do not include the large number of employees hired during wartime and released during postwar demobilizations—they represent only enduring growth. The pattern of this growth can be described as a "ratchet phenomenon." During each war hundreds of thousands of new civil servants were recruited in order to cope with the exigencies of the crisis; during the demobilization following each war the number of civilian employees laid off was substantially less than the number hired during wartime. The result was extensive net growth in the executive branch.

From 1916 to 1918, over 450,000 civil servants were hired, more than doubling the size of the federal administration. Over the course of a three-year period following the armistice, some 294,000 employees were laid off, resulting in a permanent gain of over 158,000 employees, a net increase of 40 percent. The Second World War saw a yet more dramatic transformation of the government. In 1939, when massive rearmament began, the executive branch employed roughly 936,000 civil servants. By 1945 a fourfold increase in government employment had taken place, and the number of civil servants surpassed 3.8 million. Four years of postwar demobilization reduced this number by nearly half, to 1.93 million federal workers in 1950. The net gain over the 1939 payroll was 1 million civil servants, an increase of over 100 percent. A similar "ratchet phenomenon" manifested itself during the Korean and Vietnamese conflicts with net gains of 437,000 (22 percent) and 269,000 (11 percent).

Contrast the government's wartime expansion with the increases that occurred during peacetime. From the bottoming out of the post-World War I layoffs to the beginning of the Depression, a period of six years, the executive branch added only 42,000 workers

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to its payroll, a rate of growth slower than that of the population. From 1929 to 1933 Hoover added another 23,000, largely to attempt anti-Depression measures. From 1933 to 1939 the Roosevelt Administration hired 310,000 civilian workers. The majority of these hirings were in connection with various New Deal programs, but over 30 percent of them were in the War and Navy Departments and were related to rising international tension and national defense preparations.

The Depression, like the wars, was a crisis, and as in wartime most of the employees were hired on a "temporary" basis. Had World War II not begun when it did, it is likely that post-Depression layoffs would have taken place. As it was, the Civil Service reports of 1938 to 1942 illustrate that thousands of employees in FDR's numerous New Deal bureaus were eventually transferred to war departments and emergency war agencies. Many relief agencies were abolished. Thus, even a fair portion of the permanent rise in government employment from 1933 to 1939 must be attributed to defense preparations, not to the New Deal.

No peacetime growth can be measured between World War II and the Korean War, because the nation had hardly completed demobilization when Kim Il Sung's troops invaded the South. After Korea the United States enjoyed 11 years of relative peace during which the government grew by 115,000 civilian employees, a rate of growth slower than the population. Since a post-Vietnam low in 1973, the government has added about 80,000 employees; its total size remains smaller than at the height of the Southeast Asian conflict.

The statistical history of federal employment makes it impossible to dispute that the American government has experienced by far the largest part of its growth in wartime, but a critic of the above analysis might argue that the employment figures merely show the rise of the Defense Department to a dominant position in the bureaucracy as the United States has become a "national security state." Since the Defense Department has come to constitute nearly half of the total federal employment and since its civilian manpower is the most volatile component of the Civil Service, it could be argued that the large fluctuations in the bureaucracy's growth rate and its expansion during wartime reflect only the large defense component in all figures and say nothing at all about the rest of the government. In order to meet this criticism it is necessary to demonstrate that national war efforts and defense preparations were a major factor in the growth of departments and agencies not di-

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rectly involved in waging conflicts. This is easily done by studying the wartime growth spurts more closely.

Four wars

The First World War was a time of administrative upheaval in the United States government. The war saw the first significant use of the corporate form of organization by Washington, the dissolution of former restraints on the establishment of agencies independent from the cabinet departments, and the first significant federal aid to state and local governments. During the two years of conflict the number of civilian employees in the nonmilitary cabinet departments and agencies increased at almost precisely the same rate as the number of employees in War and Navy. Following the armistice, the "ratchet phenomenon" was evidenced throughout the bureaucracy. By mid-1920, when military demobilization was largely accomplished, the only units of the executive branch which had not experienced net growth were the Smithsonian Institution, the Interstate Commerce Commission, and the Panama Canal Company (which would have shrunk in any case since construction was completed shortly before the war began). Treasury had gained nearly 40,000 employees, Commerce nearly 8,000, and State, Justice, Interior, Agriculture, Labor, and the Post Office had all grown in size despite the acute wartime labor shortage that had hampered industrial support of the military. Numerous new agencies and commissions had been created during the war, adding over 15,000 civil servants to the bureaucracy. Almost all of these new units survived the postwar cutbacks, though organizational lines and titles were in some cases reworked.

Postwar civilian layoffs from the executive branch continued for nearly three years after the demobilization of the armed forces was completed. From 1920 to 1923 the ranks of the executive branch declined by over 120,000 employees; this can be attributed almost entirely to cutbacks in the War and Navy Departments. By 1929 the combined personnel of those two departments was approximately 98,000 persons, a reduction of approximately 200,000 from their wartime peaks, but still a third more civil servants than they employed in 1916. By contrast, the nonmilitary bureaus of the government laid off a far lesser portion of the personnel added during the war and managed to retain most of the net gains throughout the 1920's. By 1929 the nonmilitary cabinet departments and agencies, excluding the Post Office, employed 174,000 civil servants, over

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50 percent more than in 1916. All but a fraction of this growth can be attributed to the war. Agriculture and the Post Office were the only departments which experienced significant peacetime growth in the 1920's, and many of their new employees were drawn from those laid off at War and Navy. The Veterans Bureau was also established in this decade—an obvious product of World War I and an agency which was destined to become one of the largest in the government.

The First World War clearly exerted a far-reaching influence on the entire federal administration, not just on the military departments. It was unquestionably the principal cause of the bureaucracy's net expansion between 1916 and the Great Depression.

Merlo Pusey, writing in the *South Atlantic Quarterly* in July 1943, characterized World War II as a "revolution at home." He observed that "the whole pattern of our economic and social life is undergoing kaleidoscopic changes without so much as a bomb being dropped on our shores." The federal government set out to mobilize virtually the entire national economy in support of the war effort, and the impact upon the national administration was indeed revolutionary. The heady organizational and constitutional developments of the New Deal era from 1933 to 1938, while of great consequence for the nation's future, did not come close to affecting the federal bureaucracy in the same magnitude as did the Second World War.

During FDR's first six years in office, numerous new agencies and commissions had been created and the bureaucracy had swelled by about 272,000 employees. Less than a fourth of these additions were in the War and Navy Departments; the rest were chalked up by the traditional cabinet departments and by a proliferating mass of independent agencies. Under the New Deal the average compound growth rate of the nonmilitary bureaus was 7.5 percent annually. In 1939 the nation began a program of rearmament, a prelude to the radical transformations in government and the economy which were to follow Pearl Harbor. The War and Navy Departments more than quadrupled in size from 1939 to 1941, prior to American entry into the war. They more than doubled again in the single year from 1941 to 1942, bringing the total civilian employment in the military bureaucracy to 1,291,000. For the first time in American history the size of the War and Navy Departments surpassed the entire employment of all other departments and agencies combined. By 1945 the two military departments employed over 2.6 million persons, a 16-fold increase in seven years. Added

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to their ranks were 200,000 civilians employed by emergency wartime agencies. In order to meet the tremendous demand for personnel the Civil Service Commission was enlarged and an intensive recruiting drive was undertaken; the legal restrictions on recruitment and hiring were greatly relaxed.[4]

Despite the phenomenal growth of the military bureaucracy and notwithstanding an acute national labor shortage caused by the conscription of nearly 12 million men, the nonmilitary bureaus of the government also expanded during the war. In fact, they grew at a faster rate—7.7 percent annually—than they had grown under the impetus of the New Deal. The absolute growth of the nonmilitary departments and agencies under the New Deal (1933-38) was 211,000; from 1939, when war preparations began, until 1945, they grew by 450,000 employees. Clearly the impact of World War II on the growth of the federal bureaucracy was not limited to the rise of a massive, permanent defense establishment. A large majority of independent agencies and all but two cabinet departments —Agriculture and Interior—expanded during the war. Agriculture made large gains in the first two years of the conflict before being cut back in 1943-44, and Interior lost only 10 percent of its personnel.

It was observed earlier that following the First World War, the nonmilitary bureaus of the government managed to avoid the deep cutbacks experienced by War and Navy during demobilization. In the first three years after the defeat of Japan these same bureaus actually managed to *increase* their personnel levels substantially. A special Congressional committee, chaired by Virginia Senator Harry Flood Byrd, studied this development closely. The Joint Committee on the Reduction of Nonessential Federal Expenditures concluded that "most of this increased personnel was occasioned by the transfer of functions from scattered war agencies which had been ordered transferred or liquidated." Administrators argued that they needed the additional employees in order to handle the backlog of work caused by the curtailment of peacetime activities during the war. The Committee responded, to no avail, that the agencies ought to be able to handle the backlog with the extra employees they had acquired to handle wartime emergencies.

Agriculture and Interior were at the forefront of these postwar increases, with the result that from 1939 to 1949, the "war decade,"

[4] The radical metamorphosis of the Civil Service Commission during the war is described at length in Gladys Kammerer, *The Impact of War on Federal Personnel Administration* (University of Kentucky, Lexington, 1951).

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every cabinet department and all but a handful of minor agencies experienced substantial net growth. When the Defense Department was created in 1949, government employment was at a postwar low of some two million employees due to layoffs by War, Navy, and the emergency war agencies, but this nevertheless represented a doubling in its size since 1939. The war brought about the greatest administrative revolution in American history.

During the Korean War and the War in Vietnam the federal bureaucracy exhibited somewhat different patterns of growth than it had during the two World Wars. From the invasion of South Korea until 1954, the government added over 400,000 employees to its ranks, but almost all of this increase occurred in the Defense Department. Taken as a whole, the nonmilitary units of the bureaucracy experienced virtually no net growth. Just the opposite occurred during the Vietnam War, when the Johnson Administration undertook numerous social programs parallel to the war effort. By 1968 government employment had climbed to its highest level since 1945, with three million employees. This amounted to an increase of 540,000 over 1964. The Defense Department accounted for over half of this increase; however, by 1973 Defense had laid off almost exactly the same number of employees it had taken on during the war, and the executive branch was left with a net employment increase of around 250,000. The Postal Service and the Veterans Administration accounted for nearly half of the net growth, meaning that the contribution of LBJ's Great Society programs to the bureaucracy's expansion from 1964 to 1973 was at most some 131,000 employees, less than 5 percent of total federal employment. The contribution of those social programs to the market increases in government spending that occurred during and after the War in Vietnam was of course much more substantial, but as noted earlier, government spending and the size of the federal administrative hierarchy *per se* have little relationship to one another.

Harnessing the nation

It is easy to understand why America's participation in two World Wars and two Asian wars led to the rise of the massive defense establishment that now constitutes over a third of the entire federal bureaucracy. Less obvious are the reasons why the wartime efforts contributed so heavily to the growth of the rest of the executive branch—why nonmilitary bureaus were able to expand at times when personnel and resources were in such high demand by

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heavy industry and the military. The answer lies partly in the nature of modern warfare. In the 20th century the successful waging of war has depended as much on a nation's capacity to summon its economic and technological resources as on the size and skill of its armed forces. This is best illustrated by the experience of the Second World War. The intensity and length of that conflict required that virtually every significant economic activity in the country be harnessed on behalf of the war effort.

Huge sums of money were needed to fight the war, and the Treasury Department responded to the challenge. Tax collection became more aggressive: Income withholding was introduced as a "temporary" measure, and the number of tax returns filed went from 7.5 million in 1939 to 50 million in 1945. By the end of the war total annual revenue had increased 842 percent over 1939! Is it any wonder the Department was forced to add 40,000 employees —a 67 percent increase? The effects of "domestic mobilization" reverberated throughout the bureaucracy. Government controls on industry and labor multiplied dramatically—by 1943 the federal government had become the purchaser of roughly half the entire national output and the virtual dictator of wages, prices, production schedules, and the like. The administrative burden on Commerce, Labor, and the regulatory agencies was considerable, and their wartime expansion must be viewed in this light. It is simply not possible to fight a war in the modern age without greatly enlarging government control over the national economy.

The wartime crisis was invoked by many an administrator seeking funds for his agency. The Congressional appropriations hearings from 1941 to 1945 reveal how thinly the relationship between agency operations and the war effort could be stretched. Mr. S. A. Rohwer's testimony before a House subcommittee on behalf of the Bureau of Entomology and Plant Quarantine concerning an appropriation for "Control of Incipient and Emergency Outbreaks of Insect Pests and Plant Diseases" is to the point:

> The Chairman: This is another front in the War?
> Mr. Rohwer: That is right.
> The Chairman: We have the Japanese on one side and the Germans on the other side, and these pests in between?
> Mr. Rohwer: That is correct; and these pests have a very definite bearing on food production.

Similarly, armed with Executive Order No. 9165, "providing for the protection of essential facilities from sabotage," the Bureau of Reclamation managed to win a sizeable appropriation for enforcing

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explosives laws and hiring extra (emergency, of course) forest-fire fighters. "The normal fire hazard is ordinarily severe enough," the Bureau argued, "but a planned campaign of incendiarism by enemy forces or agents which may develop could conceivably cause untold destruction and havoc. . . ." The result: 150 "temporary" employees.

In a similar manner Congressman John Dingell of Michigan argued for retaining a botanist researching at Bario Colorado Island in Panama because, "I am told that educational institutions, scientific institutions, the Army and the Navy, for years have been dipping into this man's accumulations of scientific data." In 1944 the Interior Department sought an added $90,000 for the Reindeer Service in Alaska, including salaries, partly because reindeer "are life insurance for all residents, native and white; they are a valued asset in military planning." The Library of Congress sought extra money for three men to be hired who would travel to Portugal, Switzerland, and China. When a House committee expressed skepticism, Mr. MacLeish, Librarian of Congress, noted that the periodicals sought would be of use to the Board of Economic Warfare, and would have "a very direct bearing" on the war effort. The Bureau of Indian Affairs succeeded in obtaining additional employees with the argument that the Indians were making a splendid contribution as soldiers and Signal Corps members.

More than mere opportunism is reflected in these testimonies. The greatest war in American history was underway, and no one knew if American territory would be physically threatened or how long it would take to attain victory. In the meantime everyone wanted to contribute to the war effort. That such dubious requests were offered in seriousness simply illustrates the atmosphere of the era. The demands of international conflict necessitate an increase in the power of the central government, providing both the opportunity and the impetus for rapid expansion of the administrative apparatus. In peacetime the bureaucracy tends to evolve more incrementally.

What goes up, seldom comes down

The pattern of the government's growth was characterized earlier as a "ratchet phenomenon": Over the long run the level of federal employment rises steadily because far fewer civil servants are laid off during demobilization than are hired during mobilization. In order to complete the argument it is necessary to analyze the down-

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ward side of this pattern more closely. Why, after the necessities of war have receded, does the government not return to its prewar level? What accounts for the "ratchet" effect?

It is tempting to ascribe the "staying power" of the federal bureaucracy to the invisible workings of some organizational imperative. Perhaps a modified version of Parkinson's Law is in effect—work expands so as to occupy the number of employees available to do it—or perhaps bureaucracies have an innate tendency and capacity to resist shrinkage. It is certainly true that during postwar demobilizations, agency and department administrators make vigorous efforts to fight cutbacks, to preserve their newly enlarged domains, and to retain surplus employees as a hedge against future layoffs. Yet it is important to remember that the bureaus do not exercise final authority over the number of their personnel. Congress authorizes permanent positions and it can mandate cutbacks if it wishes. After World War II, when it became apparent that federal administrators were not making the deep cutbacks in personnel recommended by the White House and the Congress, Senator Byrd observed that their failure to act voluntarily simply shifted to the Congress the responsibility for forcing the necessary layoffs. The real question is why the Congress did not seek more drastic layoffs following the wars, even when it was widely acknowledged that the bureaucracy was too large.

Three principal reasons may be advanced: First, Congress hesitated to mandate massive layoffs for fear that doing so would increase unemployment and contribute to an economic recession. This concern was heightened by the fact that hundreds of thousands (and in the case of World War II, millions) of soldiers were returning home and entering the labor market. After each of the two World Wars Congress broadened the veterans' preference laws in order to facilitate integrating soldiers into the Civil Service—and this despite the fact that postwar layoffs were underway. After World War II there were even several cases of soldiers being transferred to the civilian payroll while still abroad and still performing the same tasks they did in the military.

Secondly, there was virtually no public demand for Civil Service layoffs, perhaps because the termination of each conflict enabled Congress to enact substantial tax cuts without massive layoffs. In the case of World War II, the tax base had expanded so greatly during the war that it was a relatively simple matter to cut taxes and still fund the vastly enlarged bureaucracy. In the absence of public demand to trim the government further, there was little in-

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centive to sacrifice the "windfall" tax base bequeathed the government by the war effort.

A third reason, perhaps the most salient of all, is the inherent tendency of Congress to act incrementally when not faced with a crisis. The exigencies of international conflict compel legislators to act swiftly, to approve huge budgetary increases, and to trust the judgment of the executive as to what is needed to fight the war. Demobilization, on the other hand, is not a crisis. Though legislators recognize the need to reduce federal employment after a war, they feel no need to act precipitately. Congress is inclined to act slowly, stretching the cutbacks out over several years. Aaron Wildavsky has demonstrated how Congress usually prefers incremental adjustments in the budget; the same tendency apparently holds true when it considers adjustments in federal employment.

Following each of the first three wars of the 20th century, reductions in federal employment took place for a period of four to five years. They then invariably ceased—regardless of how much the government had grown from its prewar level. In the case of Vietnam, cuts in employment began in 1969, concurrent with the first military withdrawals, and continued only until 1973. It seems that the longer deep cutbacks are delayed, the more accepted become the new tasks and enlarged size of the bureaucracy. This result suggests a formula for federal administrators seeking the long-term expansion of their particular bureaus: 1) during a war prove to the Congress that your agency is critical to the war effort, then expand vigorously while the conflict is underway; and 2) for a five-year period after the war stave off any attempts to reduce your agency to its prewar size. Any increase remaining after five years will be permanent.

Parkinson's Law reconsidered

This essay began with Parkinson, and Parkinson deserves a final word. In a recent *New York Times* interview (June 19, 1978), Dr. Parkinson acknowledged that his experience as a staff officer in World War II was a major inspiration behind the formulation of Parkinson's Law. Citing the example of a private becoming a lieutenant colonel with a staff of 85 in only three months, he observed that in wartime "you can build in two weeks a bureaucracy which would take years to accumulate in peacetime, so you can actually watch the plants grow and proliferate." It should come as no surprise that even the famous law was a product of the Allied war

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effort. With such encouragement, I feel emboldened to offer my own conclusions:

1. The principal cause of the expansion of the United States government has been the nation's involvement in four foreign wars in the 20th century.

2. This is true for the entire executive branch, not just for the defense-related sectors of the bureaucracy. Modern warfare requires national economic mobilization, and the non-defense bureaucracy must be enlarged to accomplish this task. Even agencies only remotely related to the waging of a war are able to find opportunities for expansion that do not exist in peacetime.

3. Following the wartime expansion of the bureaucracy, a "ratchet" effect comes into play and the bureaucracy retains much of its growth despite postwar layoffs. This "ratchet" effect occurs because Congress lacks the political will to force deep cutbacks in the absence of a pressing need to do so. Wartime gains in federal employment that are not trimmed within five years will generally become permanent.

4. The New Deal, the Great Society, and other domestic welfare programs are important causes of the growth in government *spending*, but their contribution to the growth of government *bureaucracy* has been decidedly secondary.

The historical origins of modern bureaucracy can be traced to military organization, and according to the German scholar Henry Jacoby, the military mentality has given rise to the bureaucratic mentality throughout history. It was war and the struggle for security that eroded feudalism in Europe and gave rise to the nation-state; war and national preparations for war have been major shaping influences in political development ever since. This is certainly true of the American government's evolution, despite the nation's freedom from foreign invasion throughout most of its history. A real understanding of the impact of war on government and administration, however, will require a breaking down of the academic walls that too often divide the study of domestic politics from the study of international relations.

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The graying of civil rights law

PETER H. SCHUCK

NONDISCRIMINATION laws have come to play a central role in the design of public policy in the modern welfare state. Between 1964 and 1975, Congress enacted a spate of such laws to prohibit discrimination in federally assisted programs and activities. The first of these, Title VI of the Civil Rights Act, barred discrimination on the basis of race, color, or national origin. By 1975, the nondiscrimination principle had been extended to protect several other groups, most notably women (in employment and in education programs) and the handicapped.

That year, Congress added age to the list of protected characteristics by enacting the Age Discrimination Act of 1975. The ADA was sweeping in its coverage, purporting to protect not merely the elderly—who clearly were its principal beneficiaries—but *all* persons at *all* times during their lives in *all* federally assisted activities. The ADA's brief history is worth pondering, for it exemplifies several distinctive aspects of much modern social reform—the enactment of broadly-worded and far-reaching statutes with little consideration of their meaning or consequences; the use of legal forms designed for other purposes, in order to fulfill allocative and redistributional objectives without having to spend federal tax dollars; the use of broad-gauged legal tools to address what are in fact quite limited

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social problems; and the delegation of fundamental policy choices to the courts.

The essential structure of the ADA is simple. It prohibits discrimination on the basis of age in all federally assisted programs and activities, and then excludes from coverage those programs or activities "established under authority of any law" employing age criteria to condition benefits or participation, as well as certain employment-related programs or activities. In addition, the statute provides several broadly-worded "reasonableness" exceptions from the prohibition. Finally, it requires each federal agency or department to issue implementing regulations; enforcement of the statute is to be by the agencies and departments and, after the 1978 amendments, by private court action.

Although enacted in 1975, the ADA is only now about to be fully implemented. It will apply predominantly, but not exclusively, to the rapidly growing public sector.[1] Like Title VI, it may well require far-reaching changes in the ways in which public and private agencies conduct their activities: the age distribution of the populations they serve; how they identify and communicate with clients; how and where they render services; how and to what extent they collect information; and many other aspects of their operations.

However it may be interpreted and implemented, the ADA, like all broad-ranging civil rights statutes, will generate much uncertainty and litigation. Some uncertainty is inevitable and indeed appropriate—the purpose of reform, after all, is to unsettle existing human and institutional relationships and to generate new ones. Much of this uncertainty, however, derives from a conceptual ambivalence manifested in the statute itself. The ADA was premised upon a fundamental analogy between race discrimination and age discrimination, an analogy whose influence pervades the legislative history of the ADA and finds expression in the use of a nondiscrimination provision drawn verbatim from Title VI. Yet that prohibition was made subject to exceptions and exclusions so broad that they arguably deprive the prohibition of any significant effect. This ambivalence, so central to the ADA's impact, was not even discussed, much less explained, in its scant legislative his-

[1] HEW estimates that the ADA will apply to nearly 100,000 public and private entities that receive federal financial assistance, and to as many as 450,000 subrecipients (that is, those who secure aid from the direct recipients). These entities range from hospitals, schools, and mass transit systems to legal-services offices, libraries, and housing projects. The ADA also applies to private organizations, such as the Junior Chamber of Commerce or senior citizens' clubs, if they directly or indirectly receive federal financial assistance.

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tory. Similarly, the phenomenon of age discrimination in federally assisted activities was neither documented nor even well defined prior to enactment of the ADA. In short, the ADA was premised upon an analogy that was explicitly affirmed, implicitly denied, and nowhere analyzed.

Neglecting the critical issues

The ADA's core provisions raise three critical policy issues that, astonishingly, were not considered by its authors: 1) the ways in which decision makers use age to distinguish between people and the reasonableness of those uses in light of their consequences and the social values they implicate; 2) the reasonableness of the use of ostensibly neutral factors *other than* age when those factors affect different age groups differently; and 3) the burden of justification to which society is prepared to hold age distinctions and uses of non-age factors that affect different age groups differently. By analyzing these issues, one can suggest an appropriate conceptualization of the age-discrimination problem.

The Reasonableness of Using Age to Classify Persons. Existing law is anything but "age-blind"; it employs age distinctions in numerous contexts. Age is used as a proxy for, or as a predictor of, many characteristics thought to be correlated with age. Thus, age is commonly used as a measure of intellectual, physical, or emotional maturity (as in minimum-age requirements for certain educational programs); of readiness to assume adult responsibilities (as in minimum-age requirements for voting, consuming alcohol, or possessing firearms); of the likelihood of possessing certain risk factors (as in concentrating breast-cancer-screening programs on women above a certain age); of certain physical abilities (as in separating sports leagues by age); of the expected duration of future employability or service (as in concentrating job-training programs on younger workers or limiting enrollment in medical schools to persons under a certain age); or of the likelihood of experiencing particular kinds of problems (as in medical programs that specialize in serving certain age groups).

These classifications typically treat one age group differently than another and frequently exclude one age group from a benefit altogether. Because different groups may include individuals who are alike in all relevant characteristics save age, applying such rules can appear harsh and unjust to those individuals disadvantaged by them. On the other hand, countervailing reasons—such as equitable or

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administrative considerations—often militate in favor of such rules. Ultimately, the reasonableness of any particular age classification must rest upon the consequences of using such proxies or predictors in the contexts in which they actually operate.

A rule containing an age criterion may be opposed on grounds both of principle and of expediency. First, such a rule classifies individuals on the basis of a characteristic that is immanent and inescapable to them, one suggestive of neither culpability nor demerit. To disadvantage an individual solely because he or she possesses such a characteristic offends deeply held notions of fairness; the attribute is one over which the individual has no control and for which he or she therefore cannot be held morally responsible. Second, the use of age criteria will often reflect and reinforce stereotypes about particular age groups that adversely affect the self-image of members of that group and encourage others in society to behave as if such generalizations were in fact accurate. The vice of such stereotypes extends beyond the fact that they can become self-fulfilling prophecies. By imputing attributes to people solely on the basis of group membership, they derogate from the uniqueness of individuals, often producing factually inaccurate predictions in particular cases. Finally, age criteria may be considered objectionable because they redound to the disadvantage of groups, such as the elderly or children, whom society believes deserving of special protection or concern, often in the form of increased public benefits and services.

To each of these arguments against the use of age classifications, a strong counterargument may be opposed. If being a particular age, like being a particular race, is an immanent, inescapable attribute, it is also one that each of us presumably has experienced or will experience; members of other age groups are surely less likely to use age rules to oppress persons whose status they have shared or expect to share. Moreover, the fact that one cannot alter one's age is not necessarily an argument against an age classification. It is one thing to say that a classification stigmatizes or condemns, and quite another to say that it places one at a disadvantage vis-à-vis others. Few, if any, age classifications fall into the former category; rather, they simply use age as a basis for allocating benefits between competing claimants. Under these circumstances, it may well be that using an immanent, impersonal characteristic such as age to determine one's entitlement to benefits is less stigmatizing or damaging than doing so on the basis of a characteristic, such as maturity or employability, that reflects directly upon one's personal merit.

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Objection to age classifications on the ground that they reflect or even reinforce stereotypes proves far too much, for it applies equally to any broad classification of individuals. The rationality of any classification depends primarily upon the extent to which the persons so classified in fact possess the characteristic upon which the classification is based. Almost inevitably, classifications embracing large populations will be "under-inclusive" or "over-inclusive." At some cost, it will always be possible to obtain a better fit between classificatory means and the programmatic end by using the characteristic itself, rather than the age-proxy, as the criterion for classification. In this respect, age classifications do not differ, except perhaps in degree, from those based upon other characteristics. The appropriate question in every case, however, is not whether a classification is based upon a stereotype or whether the classification effects a perfect fit; rather, the question should be whether the disadvantages of an imperfect fit are outweighed by the practical advantages of employing the particular classification.

In the case of age classifications, these practical advantages are often considerable. Age is a highly objective, easily measured characteristic, especially when compared to those qualities, such as maturity or susceptibility to certain physical conditions, for which it often serves as a proxy. Thus, age classifications can be administered more easily than those dependent upon criteria that are difficult to measure directly or that require individualized determinations. Furthermore, the relative objectivity and ease of administration of age rules suggest that their applicability, as distinguished from their reasonableness, will seldom be controversial. This constrained discretion constitutes an essential safeguard not only against bias or arbitrariness in the application of such rules but also against good-faith, bureaucratic error.

Another advantage in using age as a classificatory criterion is that the immanence of age prevents individuals from manipulating it (as they might, for example, their income). Thus, individuals are unlikely to modify their behavior in response to the incentives created by the age rule, and the consequences of using such rules will be relatively predictable.

The final objection to the use of age rules—that they unfairly burden certain groups—amounts to an assertion that those groups should receive a different (and presumably greater) share of public resources than they would enjoy in the absence of such rules. Such an assertion can be neither refuted nor affirmed by recourse to any logical principle or empirical datum. It is only fair to observe, how-

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ever, that the assertion that a particular group should receive more is rarely accompanied by an assertion that other groups should receive less, yet if resources remain unchanged, the latter is the inevitable implication of the former.

For all of these reasons, a principle that age may never be employed as a classificatory criterion seems impossible to justify. On the other hand, a particular age classification may well appear arbitrary and thus not supportable under the ADA's "reasonableness" exceptions. As the preceding discussion suggests, however, such a judgment would reflect more than an evaluation of the likely consequences of using age as a criterion in that particular context; it would require in addition a choice between ineluctably conflicting social values.

The Reasonableness of Using Non-Age Factors That Create Age-Specific Differential Impacts. Typically, the criterion used to distinguish between people in the distribution of public benefits is not age itself but some other facially neutral factor such as income. Where the effect of using such a non-age factor is to advantage some age groups over others, it could be argued—again, on an analogy to judicial principles developed in connection with race discrimination—that use of that factor constitutes *prima facie* age discrimination. But such factors are numerous, reflecting the myriad considerations used by legislators, program officials, and administrators to target resources, define needs, restrict eligibility, and shape service-delivery patterns in particular social and political contexts. Most important, these factors almost certainly will generate different impacts for different age groups. Each point in the life cycle tends to be associated with different distribution of non-age factors. Furthermore, the actual distribution of needs among age groups in any particular case may well be impossible to determine. Thus, the uncertain significance of "disproportionate impact" with respect to race and sex differentials is even more problematic with respect to age-group differentials. Unless almost all ostensibly neutral classifications are to become suspect, the use of non-age factors ought to enjoy a very strong presumption of reasonableness notwithstanding the age-specific differential impacts that inevitably ensue.

The Burden of Justifying Age Classifications. In evaluating the acceptability of age classifications and non-age factors having different impacts upon different age groups, one must consider not only the consequences of using them, but the motives that animated such uses. Because legislative motive is a notoriously elusive con-

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cept, however, inferences about motives and consequences must inevitably be drawn from the political and social contexts in which these uses arise.

From this perspective, the use of age as a classificatory criterion entails a far smaller risk of arbitrariness and oppression than the use of race, alienage, or other criteria that have been held to exacting standards by the courts. This is not to say, of course, that certain age groups are never disadvantaged relative to others in the competition for scarce social resources; political conflicts inevitably generate winners and losers. It is only to say that age groups, unlike certain racial and ethnic minorities, do not come to that competition with any systematic political disability or historical disadvantage that would justify regarding the outcomes as *a priori* invidious, unreasonable, or suspect.

If age is indeed radically different from race as a basis for distinguishing between people in the distribution of resources, and if the use of non-age factors having disproportionate age-specific impacts is inescapable, then an appropriate conception of age discrimination must possess distinctive contours that acknowledge both of these conditions. Such a conception will necessarily be one of relatively limited reach, leaving decision makers free to employ age distinctions and non-age criteria in a wide variety of social choice contexts. If such a result seems difficult to square with the rhetoric of reform in which Congress enveloped the ADA, the distinctive nature of age as a classificatory characteristic nevertheless requires it.

An irresistible offering

A number of ingredients combined in the case of the ADA to yield a formidable, indeed irresistible, political offering. It promised benefits to a visible, politically influential group that all Americans hoped someday to join; its sponsors argued that it could confer these benefits at no additional cost; its redistributional implications were not clear, or at least were not noticed; and it was a small and inconspicuous part of a large omnibus bill that both Congress and the Administration supported. Perhaps most important, it drew strength from the moral legitimacy and rhetorical force of the civil rights movement of the 1960's and early 1970's, a provenance that is critical to understanding how Congress conceptualized and responded to the problem of age discrimination.

By 1975, the political foundations for the ADA had been laid. In addition to the Age Discrimination in Employment Act (ADEA) and

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other federal civil rights laws, many states had adopted statutes prohibiting age discrimination in employment, housing, credit, public accommodation, or education. A White House Conference on Aging, held in late 1971, had focused national attention on the needs of the elderly and had recommended changes in governmental policy toward the elderly. A torrent of exposés concerning execrable and often illegal conditions affecting large numbers of elderly people flowed from Congress, state legislatures, and the media. Perhaps the greatest force behind the development of the ADA, however, was the acceleration of a long-term demographic trend of great political, social, and economic consequence—the steady aging of the American population, an increase in the number and proportion of elderly Americans that is itself dwarfed by the growth rates estimated for the future. In mid-1977, the 23.5 million persons aged 65 or older comprised nearly 11 percent of the population. The 65-and-over group's share of the population is expected to exceed 14 percent by 1990, to increase to 15.6 percent in 2020, and to rise to more than 18 percent by 2025—a total of nearly 55 million persons.

If the elderly constituted a powerful political force simply by virtue of their numbers (and their marked propensity to register and vote), their real strength had additional sources including, among others, the absence of any consistent opposition to their agenda, their ability to form political alliances, and a strong public image of legitimacy stemming from their status and broad distribution throughout all strata of society. As Peter Drucker has observed, "[I]n sharp contrast to every other minority group, the older population has a very large constituency outside its own ranks."

The elderly translated their political power into a series of formidable legislative achievements. By 1975, their successes included Medicare and Medicaid, which together pay for over two-thirds of the health-care costs of the elderly; rapidly rising Social Security benefits indexed against inflation; the Supplementary Security Income program, which established a minimum federal income for the elderly, blind, and disabled and also is indexed against inflation; special housing programs; pension reform; the Age Discrimination in Employment Act of 1967; and preferential tax treatment. Another example of the political effectiveness of the elderly is the extraordinary growth in appropriations under the Older Americans Act of 1965. The Act, which authorizes a pastiche of grant programs for services, planning, research, and training, was implemented by appropriations that mushroomed from $7.5 million in 1966 to $245 million in 1975. Between 1975 and 1978, the total nearly trebled,

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reaching $696.4 million. As one observer recently noted, "the aging have proved a difficult group for officials to ignore or 'buy off' with purely symbolic concessions."

Fertile soil

When the Older Americans Act came up for reauthorization before a subcommittee of the House Education and Labor Committee early in 1975, the subject of age discrimination was not on the agenda. Indeed, the subject was mentioned only once during the hearings—and then almost in passing—when Arthur S. Flemming testified. Flemming was a commanding political presence. As former Secretary of HEW, current Chairman of the U.S. Commission on Civil Rights, current Commissioner on Aging, and a leading figure in the senior citizens movement, Flemming was perhaps the only subcabinet official in the government who enjoyed access to the Oval Office.

Responding to a general question, Flemming took the opportunity to denounce "ageism," equating it with "racism" and "sexism," and expressed the "hope that the day will come when the Civil Rights Act will be amended to include age . . . as one of the factors that must be taken into consideration under the Civil Rights Act."

Dr. Flemming's suggestion fell on fertile soil. Bills quickly were introduced in both the House and Senate to amend the Older Americans Act to prohibit discrimination on the basis of age in federally assisted programs, subject to several broad exceptions. The House quickly approved the measure, with virtually no debate upon, or explication of, its vague provisions. The Senate, however, was somewhat more circumspect. HEW Secretary Weinberger had belatedly written to the committee considering the bill, raising some of the "myriad of unexplored issues," such as whether the bill would prohibit reduced public transit fares for the elderly or permit exclusion of 3-year-olds from kindergarten classes. The Senate responded to this concern by passing a bill that simply called upon the Civil Rights Commission to conduct a one-year study of age discrimination in federal programs. A conference was convened on the Older Americans Act Amendments, including the age discrimination title.

By October 1975, with the Congressional session drawing to a close and a Presidential election year approaching, the conference on the Older Americans Act Amendments remained deadlocked. Anxious to reach some accommodation that would reauthorize the

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department's programs but reluctant to complicate delicate negotiations being conducted within a Congress not notably friendly to the Administration, HEW officials informally circulated to the conference-committee staff an internal HEW memorandum analyzing a conference draft bill that combined the House nondiscrimination provisions with a mandate for a Civil Rights Commission study. This internal memorandum—written hastily and under the constraint of a *fait accompli*—was essentially the only substantive contribution that the executive branch, which alone possessed the detailed knowledge of program operations needed to inform the debate, was to make to the design of the original act.

When the conference report was filed, it was clear that the House had prevailed: The age discrimination study mandated by the Senate bill was included, but it would be conducted *after* the ADA had been enacted into law (although prior to its effective date). Legislation was not to be deferred during the pendency of the Commission's study, but the significance of the study "to a final resolution by the Congress of the difficult policy issues that are left undecided by this legislation" was emphasized.

House debate on the conference report was perfunctory. Overall, only one legislator, Senator Eagleton, even bothered to raise any fundamental questions about the meaning or possible implications of the ADA, questions that were never answered. Despite his misgivings, however, Eagleton "reluctantly" supported the conference report. He and others did so on the premise that although "the evidence and background data were lacking to make effective supportable decisions in this very complicated area," the forthcoming Commission study would fill this void by alerting Congress to imperfections in the statute. Indeed, this consideration was vital to the conference compromise, and it had the intended effect. The Older Americans Act Amendments of 1975, containing the Age Discrimination Act, quickly passed both chambers and were signed into law.

The Civil Rights Commission

If Congress counted on the Civil Rights Commission's study to provide persuasive evidence to justify *post hoc* a statute that it had not troubled to think much about, it had reason to be disappointed when the Commission study was released in January 1978. The study and recommendations are important, however, for three reasons. First, the study remains the only one purporting to address

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the nature and extent of age discrimination in a wide range of federally assisted activities. Second, Congress had stressed that the study would be "essential to a final resolution by the Congress of the difficult policy issues that are left undecided by this legislation." In fact, the House held hearings on the Commission's report as soon as it was released, and actually adopted its most far-reaching recommendation—the elimination of the reasonableness exceptions. (This recommendation was deleted in conference.) Third, the Commission report, because it implicitly and unqualifiedly adopted the analogy to race discrimination and apparently influenced Congress, contributed significantly to the conceptual confusion that continues to underlie the ADA.

The Commission study began by devising an extraordinarily broad definition of age discrimination—"any act or failure to act, or any law or policy that adversely affects an individual on the basis of age." This definition suffered from at least two crucial flaws. First, it lacked the basic attribute of a definition—boundaries. Virtually any action by any recipient of federal assistance will affect different age groups differently and thus affect some of them adversely "on the basis of age." Second, it ignored the ADA itself and the limiting concepts embedded in the statutory scheme. The Commission's definition, unlike that implicit in the ADA, elided any notion of reasonableness, any concession to the "normal operation" of a program or the "objective" of a statute, or any recognition of the difference between an "action" and a "failure to act." Proceeding from this essentially all-inclusive definition of age discrimination, the Commission concluded that in each of the 10 federal programs studied, such discrimination was "widespread," that "persons aged 65 or over are consistently adversely affected," and that "reasons offered by administrators to justify their policies and practices are not acceptable."

Because the Commission's analysis of age discrimination in the Community Mental Health Centers (CMHC) program is typical of its analyses of the other programs, and because the Commission regarded the CMHC program as "one of the most glaring examples" of age discrimination, that analysis merits closer scrutiny.

The Commission's conclusion with regard to the CMHC program was a product of essentially the following chain of reasoning: (A) Although 9.9 percent of the population in 328 CMHC service areas during 1975 were 65 years of age or older, only 4.1 percent of the new patients at those CMHC's were in the 65-or-over age group; similarly, only 5 percent of staff hours for CMHC consulta-

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tion and education were directed to agencies dealing with older persons. (B) Some studies show that the elderly experience certain mental problems at a higher rate than certain other age groups. (C) Some mental health professionals reportedly preferred to work with younger patients; there was often a shortage of staff specially trained to serve the elderly; special outreach efforts to the elderly were often inadequate; and some centers in allocating resources among age groups took into account that the elderly had access to other mental health services. *Therefore*, (D) the CMHC program discriminated on the basis of age.

The Commission recognized in its follow-up volume, issued one year later, that a methodology essentially comparing gross program participation rates for various age groups against one group's share of the total population in the service area could not, of itself, support a finding of discrimination. Yet in its more highly publicized initial report, that was precisely the method employed. Nowhere did the Commission define critical concepts, such as "underrepresented" or "need for services." In no instance did it discuss any factor other than discrimination that might explain the "underrepresentation." Given its all-inclusive definition of age discrimination, of course, these omissions are not surprising: Any factor that might explain the "underrepresentation" of the elderly also would fall within its definition of age discrimination.

Better explanations

Setting aside the Commission report, however, it would appear that several factors, taken singly or in combination, are fully adequate to explain this "underrepresentation" without resort to an imputation of discrimination. First, the Medicare program, the principal source of payment for the health care received by the elderly, does not accord provider status to CMHC's and thus does not reimburse patients for most CMHC services. The same is true of most private insurance programs. These coverage limitations reflect a widespread restriction on reimbursement of mental health services in general and outpatient services in particular, one that may well constitute unwise public policy. But surely it is a restriction that falls well outside any definition of age discrimination that is not simply coterminous with "disproportionate impact."

Second, the elderly are notoriously reluctant to use mental health services voluntarily, a reluctance that contrasts with their high utilization of other medical services and that appears to persist even

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when broad outpatient benefits are available.[2] Many of the reasons for this reluctance are regrettable, some are not limited to the elderly, and some may even be remediable. Nevertheless, they cannot—with the possible exception of the preference of some providers for younger patients—reasonably be described as age discrimination.

The Commission report regarded as age discrimination every policy, practice, action, or inaction that appeared to be correlated with a less than "fair share" of services for the elderly. Although this approach begs all of the important questions—for example, questions of differing needs among different age groups, of defining the service appropriately, of causality, and of intent—the Commission report used this bluntest of analytical instruments to strike at a welter of policies and practices that it felt did not adequately serve the elderly.[3] Yet almost all of these appear to be *bona fide* (albeit flawed and often ineffective) efforts by decision makers to accommodate conflicting policy objectives to limited resources, rather than instances of age discrimination.

Armed with its indictment, the Commission report proceeded to recommend sweeping amendments to the still-unimplemented ADA. While most of the suggested changes were not major, the Commission's first and most important recommendation certainly was: In order to expand the sweep of the ADA, the Commission would amend the statute's statement of purpose to prohibit all age discrimination and not merely "unreasonable" discrimination, eliminate all "reasonableness" exceptions and the "any law" exclusion, and permit only two narrow exceptions to the flat prohibition against age discrimination.

This recommendation could hardly have been more far-reaching. It would vastly broaden the limited definition of age discrimination implicit in the exceptions and exclusions of the ADA, thereby ig-

[2] According to one gerontologist, this resistance extends to social services generally. Researchers attribute this reluctance to a variety of factors in addition to the economic one: the stigma that often attaches to mental illness, mistrust by the elderly of mental health professionals, a tendency of the elderly to define problems in physical rather than psychological terms, preference for emotional support from family, clergy, or senior citizens' groups, lack of transportation, limitations on mobility, fear of visiting new settings, language differences between the elderly and many CMHC staff, and a preference by some mental health providers for better educated, therapeutically promising, and middle-class patients.

[3] Singled out as examples of discrimination were the emphasis in some health programs on preventive health care for children, youth, and pregnant women, the emphasis in the Vocational Rehabilitation program on placement in competitive employment; the emphasis in some states' social service programs on protective services for children and families; and similar judgments as to other programs' priorities.

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noring most of the differences between age and race as a basis for classification. Among the laws, policies, and practices that might well fall to the Commission's meat-axe were: minimum age laws for obtaining a driver's license; tax relief for elderly property owners or special tax exemptions or deductions for the elderly; state juvenile justice systems; minimum age laws for engaging in certain "adult" activities, such as consensual sexual relations, possessing firearms, attending X-rated films, and entering bars; a day-care center's policy of not admitting infants under a certain age; the practice of maintaining separate sports leagues or recreational facilities by age; concentrating screening for certain diseases such as breast cancer on particularly susceptible age groups; and targeting anti-smoking campaigns towards teenagers. Moreover, the validity of countless non-age factors would be called into serious question by the changes.

Clearly, no one (and certainly not the Commission, which did not even trouble to ask) knew exactly what laws, policies, and practices this recommendation would invalidate or place in jeopardy. Quite apart from uncertainties of statutory interpretation, considerable difficulties would arise because no inventory of the age and age-related distinctions or the differentiating factors other than age actually used in federally assisted programs had ever been compiled, much less analyzed for consistency with the ADA. Significantly, the report shows no evidence that the Commission ever seriously considered either the arguments against repealing the "reasonableness" exceptions and narrowing the "any law" exclusion, or the implications of so sweeping an action.

Despite the defects of the Commission's report and recommendations, a bill containing the most important changes proposed by the Commission quickly passed the House, 361 to 6. The executive branch once again was caught unawares, and belatedly swung into action. It distributed a summary analysis of the House amendments, opposing most of them and pointing out their potential effects on existing federal, state, local, and private programs. Significantly, this marked the first time since the genesis of the ADA in 1975 that the meaning and policy consequences of either the original statute or the proposed amendments had been clearly addressed. HEW's resistance precipitated negotiations between HEW, the White House staff, and Flemming. The upshot of all this was that the 1978 amendments to the ADA left the exceptions and exclusions unchanged, but authorized private litigants to enforce the ADA through the courts.

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Interpreting the ADA: reading shadows on walls

While little else may be certain about the ADA, it is clear that it will spawn a great deal of litigation. Several aspects of the ADA invite efforts to test its limits and meaning: the programmatic breadth of its coverage, which includes virtually all federally assisted activities; the sweeping nature of its prohibitory language; its ambiguous exceptions and exclusions; its unusually sparse legislative history; the manner in which HEW interpreted the reasonableness exceptions in its government-wide regulations; and the continuing (indeed, after the Commission's report, growing) uncertainty concerning the nature, meaning, and extent of age discrimination. The 1978 amendments authorizing private enforcement, together with provision for award of reasonable attorneys' fees to prevailing plaintiffs, will surely spur court challenges.

The Department of Health, Education, and Welfare, in issuing the regulations that will bind other agencies in their implementation of the ADA, side-stepped most of the important legal and policy choices that the vague legislation leaves open. Perhaps the most far-reaching of these questions is whether or not program administrators may target scarce funds on those age groups that are most likely to benefit from them. May CETA programs focus their efforts upon younger workers because of their longer remaining work life? May Community Health Centers concentrate preventive health programs upon children and young mothers? May medical schools limit admission to persons under 35 as a way of maximizing the amount of service the public will receive from its graduates? In each of these cases, should the answer turn upon whether the administrator employs an explicit age criterion or instead uses a criterion—such as cost-effectiveness—that is neutral on its face but affects certain age groups disproportionately?

These are difficult issues. If program administrators can employ age, cost-benefit, or cost-effectiveness criteria, the elderly will almost always be excluded because of their lower life expectancy, and the ADA's prohibitions will be rendered largely nugatory. On the other hand, the ADA was enacted not solely for the benefit of the elderly but for *all* age groups. If use of an age distinction (or of numerous other criteria likely to have age-specific impacts) redounds to the detriment of one age group (such as the elderly), it must also redound to the benefit of another (such as young workers). That different groups compete in a zero-sum game with respect to limited program benefits may be regrettable, but it is also inescapable. However these questions are viewed, one point is

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certain: For Congress and HEW to have adopted and implemented an age discrimination law without ever having resolved so fundamental and well-defined a policy issue was to do little more than encourage false expectations, sow confusion, and delegate major policy-making powers to the courts.

To examine the gestation of age discrimination policy under the ADA is to glimpse the shadows cast by the elusive interaction of problem definition, institutional and political behavior, and legal forms. The spectacle is not a heartening one. The ADA, I have suggested, was conceived with two important and interrelated genetic defects. First, there was a conceptual failure to define appropriately the nature and extent of the social problem to which the ADA was a response. That problem might have been characterized in a number of ways—for example, as one of invidious bias against certain age groups on the part of decision makers; of innocently held but persistent age-related stereotypes; of an inequitable distribution of resources generally among age groups; or of some more limited distributional inequity in particular programs. As we have seen, however, Congress and HEW neglected to provide even a clue as to the nature of the evil in question. Second, there was a failure on the part of policy-making and policy-informing institutions to discharge their most elementary responsibilities. Congress performed few of the conventional policy-making functions for which it is thought to be admirably designed: It failed to specify the problem; it gathered little information; it failed to articulate and weigh competing values or reduce them to operational terms; it considered no alternatives; and it declined to make hard choices. Having neglected to define the problem, Congress designed a legislative solution that, by reason of its singular indeterminacy, seemed consistent with any number of possible problem definitions. It adopted a sweeping nondiscrimination provision, then riddled it with similarly sweeping exceptions and exclusions. These exceptions and exclusions appeared to be designed to afford broad scope for precisely the kinds of allocative criteria—age classifications—that the nondiscrimination provision flatly condemned.

Although the legislative history does not indicate that Congress was even aware of the tensions and contradictions between these two approaches or of the implications of combining them, one may hazard a guess as to its motivation in proceeding as it did. The analogies to previous civil rights legislation evoked symbolic and rhetorical associations that few legislators were inclined to resist. To have done so would have required them to articulate some un-

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popular truths: that apart from the employment area—where an age discrimination law already existed—the elderly in general do not have the need for special legal protection that racial minorities do; that the elderly apparently do not perceive that widespread age discrimination exists; that most of what the Civil Rights Commission was later to characterize as age discrimination appeared instead to represent nothing more sinister than a series of difficult, but good-faith, judgments about how scarce resources could best be stretched in pursuit of social objectives; that such judgments in many, perhaps most, cases could best be made by resort to age criteria; that without increases in resources, gains to the elderly would simply be at the expense of other age groups; and that, accordingly, the evil of age discrimination required a far more limited and refined legislative response than did that of race discrimination. With the notable exception of Senator Eagleton, however, no legislator was prepared even to acknowledge the existence of such realities, much less to consider their implications.

The policy-making process in theory ensures that such contradictions and implications will at least surface and be explored, if not resolved. It does so by encouraging interests potentially disadvantaged by pending legislation to make their concerns known to Congress and the executive branch. In the case of the ADA, those interests consisted primarily of the beneficiaries of federally assisted programs, individuals whose participation might be jeopardized if, without an increase in program resources, the participation by members of some other age groups were increased due to the ADA's strictures against age discrimination. In the real world, of course, the notion that, say, CETA job holders in their teens and twenties would perceive the very real threat to their CETA benefits posed by a ruling that a larger share of CETA job slots go to the elderly, and would organize politically to resist it, is fanciful. For that reason, HEW and, to a lesser extent, other agencies constituted proxies for such interests. In addition, however, these agencies had their own political and policy interests in defending the way in which they and their grantees distribute their resources and administer their programs. They also had an interest in helping to define the problem, in pointing out the implications of the proposed legislation, in offering alternative approaches, and in otherwise precipitating consideration of important issues.

The process, however, broke down. With Congress apparently determined to continue stumbling about in the dark, the executive branch chose not to help it find its way. From an inadvertent be-

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ginning early in 1975 to the amendment of the ADA late in 1978, HEW played an insignificant and wholly reactive role in the design of the legislation, a role that Congress did nothing to magnify. As a result, the ADA was enacted by a Congress operating in a vacuum of information concerning the nature of the problem, its magnitude, the legislation's likely effect, and the existence of many alternative approaches to the problem.

Conceptual confusion

Just as these Congressional and executive branch abdications assured that questions of problem definition and appropriateness of remedy would go unanswered—indeed, unasked—the conceptual confusion concerning the nature of age discrimination encouraged those abdications. Having conceived of the problem as one of "ageism" leading to the arbitrary exclusion of the elderly from publicly supported benefits, Congress naturally turned to a familiar legislative remedy for such injustices—a "nondiscrimination model" of group protection based upon the Title VI analogy. Apparently sensing that this analogy was inapt, however, Congress also embraced a different form—an "allocative model"—that countenanced the widespread use of age as a criterion for distributing resources among groups of people.

The ADA, then, evidently was conceived of as a hybrid form. For though its prohibition of discrimination employs the nondiscrimination model, its reasonableness exceptions contemplate that many allocative choices that take account of age may properly be exercised by decision makers. Combining these models is not necessarily logically inconsistent. To combine them without even addressing the fundamental tensions between them, however, is to set policy adrift from its moorings in considered choice; for each model generates distinctive tendencies and implications that are at war with one another.

First, the nondiscrimination model creates a legal right formulated as an abstract rule: No person shall be subjected to discrimination on the basis of age. At least in its pure form, the rule brooks neither qualification nor compromise. Because it is usually linked to notions of fundamental human dignity, a right to be free of discrimination evokes powerful convictions of an entitlement immune to limitation at the instance of anyone other than its possessor. Such rights are often established only after a protracted struggle in which numerous political and ideological obstacles are overcome by in-

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sisting upon the absolute nature and primacy of the basic human values that underlie the rights. Although the ADA itself required no such struggle, its identification with the tradition of civil rights legislation produced the same ideological momentum toward the establishment of unconditional legal rights, a momentum that very nearly succeeded in eliminating the reasonableness exceptions and exclusions from the law in the 1978 amendments and actually succeeded in significantly narrowing the exceptions through the government-wide regulations issued under the ADA. Not surprisingly, then, a right to be free of discrimination tends to be difficult to adjust or limit. The invocation of prudential or political considerations arguing in favor of change can easily appear to repudiate the underlying values.

In contrast, the allocative model rarely creates legal entitlements in individuals. Instead, it shapes the exercise of bureaucratic discretion by prescribing distributional criteria to be applied by officials. Where the nondiscrimination model seeks primarily to vindicate abstract principles resistant to compromise or piecemeal implementation, the allocative model concerns itself primarily with the distribution of resources according to criteria that, by often permitting flexibility and judgment in their application, encourage bargained and incremental solutions.

Second, the two models differ in the form of their commands. The nondiscrimination model is wholly prohibitory. It neither instructs the person to whom the command is directed what to do or how to do it, nor in any way defines his task or identifies the factors or objectives that should inform his exercise of discretion. Instead, it simply instructs him that he may not take a particular fact or attribute into account in making decisions authorized and governed by other statutes. In contrast, the allocative model is characteristically affirmative: It directs the official to distribute resources and take other positive actions in pursuit of specified objectives, while defining the criteria that must shape exercises of discretion. Accordingly, it implicitly (and often explicitly) reveals both the political choices that animated it and at least the first-order distributional effects that it proposes to generate.

Third, the nondiscrimination model covers an extraordinarily broad range of activities and relationships—for example, all federally assisted programs in the cases of Title VI, section 504, and the ADA. This vast sweep is only possible because of the generality of its nondiscrimination rule and its prohibitory form. The allocative model, however, is employed to address a discrete problem or con-

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dition, such as inadequate housing for low-income people or the nutritional needs of the elderly. Thus, the criteria of choice that it prescribes and the zones of discretion that it creates are marked by relatively clear boundaries. Accordingly, the task of agencies and courts in interpreting nondiscrimination laws tends to be more difficult, more controversial, and necessitates more fundamental policy choices, than in the case of allocative laws.

Finally, the nondiscrimination model often can achieve redistributive effects in ways that neither are obvious to the public nor require the creation of a grant program. Section 504, for example, does not direct anyone to do anything, much less divert resources from the nonhandicapped to the handicapped; it simply prohibits discrimination on the basis of handicap. Yet the effect of that law, if enforced, almost certainly will be to increase the level of resources flowing to the handicapped. In contrast, the allocative model's distributional objectives are explicit and therefore likely to be controversial. This particular attribute of nondiscrimination laws appears to have been very much on the mind of the ADA's chief Congressional sponsor, Representative Brademas, who stressed during the final stages of debate on the conference report that the legislation "has the potential of providing substantial additional services and benefits to the elderly without establishing a single new program or requiring additional program funding." In short, the use of a nondiscrimination model rather than an allocative model relieves Congress of the political risks of having explicitly to allocate scarce resources among competing groups, to raise additional resources by taxation, or to expand the federal budget. It also generates political benefits for Congress with the protected group and has the appearance of benefiting all members of the public equally. The political virtues of such an approach are obvious.

These characteristic differences in the models suggest that the decision to employ one model or the other, or, as in the case of the ADA, to adopt elements of both, is likely to be an important judgment entailing significant legal and policy consequences. Each model is appropriate for addressing particular kinds of social problems. Other things being equal, the nondiscrimination model will be most effective when there is reason to believe that decision makers are either biased or governed by false stereotypes with respect to a particular fact or attribute, and there is no legitimate reason to consider that fact or attribute in making regulatory or allocative decisions. Moreover, two features of the nondiscrimination model—its ability to sustain political momentum through its

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powerful symbolism and resistance to change, and the low visibility of its potentially far-reaching redistributive effects—commend it to groups that seek respite from the conventional social and political processes by which limited resources are allocated among competing social needs. By escaping the competitive constraints of those processes, such a group can hope to reaffirm the primacy of the nondiscrimination principle, reduce or eliminate the discretion of unsympathetic decision makers, and maximize the flow of resources to its members.

The allocative model, on the other hand, is best suited to address problems that cannot properly be resolved by resort to a pre-existing, impersonal, general rule. Such problems implicate a number of competing, highly interdependent, and frequently changing ends whose weights are neither static nor objectively determined. The allocative model assumes that those ends must be balanced and compromised through a flexible, cybernetic, contingent, and ultimately political process. It assumes that such a process cannot be reduced to abstract rules or to fixed definitions of need, but must instead be free to take account of many considerations and different indices of need. Most significant policy questions with which legislators and administrative agencies grapple are essentially of this kind. Growing social complexity and interdependence are probably increasing their incidence and importance.

To contrast the nondiscrimination and allocative models, however, is not to suggest that these remedies and the problem definitions that they reflect are mutually exclusive. Comparison of the two models is intended only to suggest that the choice of statutory form generates important consequences that in the case of the ADA were never considered by the principal policy-making institutions.

On the basis of the evidence produced in the Congressional hearings, the Civil Rights Commission study, and HEW's administrative hearings on the government-wide regulations, one is forced to the following conclusion: If federal policy fails to adequately protect and advance the interests of the elderly, that failure is not because of any significant pattern of "ageism" on the part of federal officials or federal grantees but instead reflects the fact that society has chosen, perhaps unwisely, to allocate its resources in ways that do not adequately meet the needs of that group.[4]

[4] The authors (Kakala, et al.) of one recent study of older people in a major midwestern metropolitan area note that "older people report relatively little discrimination," and that "when respondents did report problems, they seldom attributed them to their age."

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If Congress, having judged that a problem did indeed exist, had concluded that it lay not in "ageism" but in inadequate program benefits to the elderly, numerous allocative options would have been available to it. Taking into account the needs and capacities of particular age groups, as well as any political considerations that it deemed relevant, Congress could have decided that certain age groups had not received an appropriate share of benefits in certain federally assisted programs and that it wished to increase that share. Once the problem had been defined in this way, Congress could have affirmatively addressed it by directing that such benefits be allocated on the basis of need as defined by whatever criteria Congress deemed appropriate for measuring that need. Numerous conventional statutory mechanisms consistent with any level of fiscal constraint were available for this purpose. To have used these allocative approaches would not have foreclosed the additional and complementary option of adopting a nondiscrimination law limited to discrete practices, such as age-limited medical-school-admissions practices, thought to be invidious.

Crowning achievements

Congress rejected such refined, targeted, problem-oriented approaches in favor of the peculiar hybrid that constitutes the ADA. What consequences can be expected to flow from its choice? Although the most important effects of the ADA, as of any social reform, may well be those that cannot now be anticipated, several predictions may nevertheless be ventured. First, the ADA is likely to increase the proportion of total program resources allocated to the elderly. If Congress may be said to have had any single coherent expectation in enacting the ADA, it was that the elderly would receive a larger share of program benefits in a world free of "ageism." But if resource levels remain unchanged, increases for the elderly will be at the expense of members of every other age group. One can anticipate, then, that the ADA will tend to intensify conflict and friction between age groups in their pursuit of public and private benefits.[5]

[5] One can well imagine that an action to increase the level of program services to the elderly could generate litigation on behalf of children's groups contending that an age criterion has been used to deprive children of their "fair share" of services in violation of the ADA. In such a case, program officials would be in a position similar to that of employers subjected simultaneously to discrimination claims by different minority groups, each alleging "reverse discrimination." This struggle to maintain and expand "market shares" may well lead to an increase in total program resources.

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Second, whatever redistribution occurs between age groups as a result of the ADA is likely to be relatively random compared to that effected by an allocative law. Redistribution through nondiscrimination laws is not the result of affirmative, problem-oriented, visible choices by Congress or agencies. Rather it is a consequence of relatively low-visibility actions reflecting decisions not to consider certain factors. In the case of the ADA, such actions generally will be taken by bureaucrats and by courts in spasmodic fashion as groups challenge particular uses of age or particular distributional patterns induced by the use of non-age factors. In contrast, under an allocative law, such actions will be taken in relatively routinized fashion as part of a visible, ongoing program.

Third, one can anticipate that the cost-effectiveness of some social programs will decline as program managers feel obliged to serve more elderly and fewer younger people in situations in which the former are more costly to serve, or less likely to benefit, than the latter; to abandon age criteria in favor of other criteria that less accurately measure the characteristic for which age was a proxy, or that measure it only at greater cost; and to undertake costly new data-collection activities in order to identify the age composition of their beneficiary populations, necessitating (in the absence of a budget increase) a corresponding reduction of actual services. Whether such consequences, on balance, are to be regarded as desirable or not is of course a judgment upon which reasonable persons may differ.

Fourth, the ADA will generate much programmatic uncertainty, magnified in some important respects by HEW's government-wide regulations. In light of those regulations, it is not altogether clear, for example, that CETA, job training, vocational education, and other such programs may maintain their present policies of concentrating funds upon persons in their prime working years, or that social-service agencies may continue to devote the vast majority of federal day-care funds to children, rather than to adults in need of day care. In view of the stakes and the ADA's incentives for litigation, it would be surprising if legal and political conflicts did not erupt over these and similar issues. Again, whether changes in the age composition of the population served by particular programs are desirable depends upon one's point of view. But few social programs will be immune from the threat of challenges to their most basic policies, policies that in many cases represent the hard-won fruits of earlier reform struggles.

The final and perhaps most far-reaching consequence to be an-

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ticipated relates to the effect of the ADA and the government-wide regulations upon the manner in which, and the institutions by which, decisions concerning the allocation of resources in federally assisted programs will be made. A number of considerations, taken together, strongly suggest that although the act reposes primary regulatory and enforcement authority in the departments and agencies, courts also will perform a central policy-making role under the ADA. To begin with, the government-wide regulations neither significantly specify the vague statutory language, nor resolve critical legal and policy issues such as the status of cost-benefit and cost-effectiveness considerations justifying the use of age criteria. Such issues will perforce be resolved by the courts. Moreover, individual agencies, in issuing and enforcing ADA regulations, will surely characterize their existing distributional patterns and policies as eminently reasonable under one or more of the exceptions. In this event, the powerful incentives for private litigation added by the 1978 amendments will enable those dissatisfied with program policies to carry their arguments into a new, perhaps more sympathetic forum.

The prospect of judicial supervision over federal, state, and local agency decisions about appropriate program policies and resource allocations is troubling. Whether the agency is determining the extent to which it should target CETA job-training funds on teenagers or senior citizens, which mix of services Community Mental Health Centers should provide, what age groups an adoption agency should concentrate on placing, or what the office hours of a local social-service agency should be,[6] the agency will be confronting problems of a type addressed most appropriately by the kind of pragmatic process intrinsic to the allocative model.

By encouraging courts to resolve such problems, we invite failure. Without decision rules to look to, without a methodology for identifying suitable criteria or assigning them appropriate weights, courts will be cast adrift on a sea of discretion. Constrained by procedural norms that hobble their ability to trace out the effects of interdependencies, to adjust to changes in the environment, or to develop political consensus on behalf of a solution, their decisions

[6] If these examples seem far-fetched, note that HEW, in issuing the government-wide regulations, made the following statement: "The act and these regulations seek to root out subtle as well as obvious discrimination. For example, the hours that a facility operates or the kind of services a program offers may determine the age groups who use the program. If these decisions have an adverse effect on persons of a particular age, they will not be permitted unless they are fully justified."

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are unlikely to constitute sound policy. Under such circumstances, courts will tend to pursue one of two courses (worse yet, they may pursue both simultaneously). Lacking the tools to perform the task at hand, a court may simply transform the problem into one that it *can* handle by radically simplifying the reality in which the problem is rooted and redefining it as one that can be resolved by recourse to a pre-existing rule. The nondiscrimination model encourages the search for such a rule, and Title VI law will remain a seductive analogy from which the rule's substantive content can be derived. Alternatively, courts may abandon their adjudicatory lifejackets and plunge heroically into the rising waters of allocative problem-solving. But they are soon likely to find themselves in over their heads, for their ability to devise suitable criteria for deciding such cases is, and is likely to remain, severely limited.

Judicial policy making under the ADA, however incompetent it may prove to be, nonetheless appears inevitable. When it occurs, it will doubtless be perceived as a judicial arrogation of powers that ought properly to be exercised elsewhere. In the end, however, the abject institutional failures of Congress and the executive branch in the case of the ADA necessarily put this question in a somewhat different and more uncertain light. For Congress to enact a law based largely upon conflicting premises, and then to refuse to define or even guide its policy except through broad intimations of sentiment, is to require other institutions to fill this void. For the executive branch first to abdicate its policy-shaping role in the legislative process, and then effectively to delegate the hard discretionary choices to the courts, is not merely to invite judicial policy making but to compel it. When this comes to pass, and the judiciary has been duly denounced as "imperial," it will be well to recall that in this case, at least, its crown, like that offered to Caesar, was neither requested nor usurped but was pressed upon it by politicians at the Capitol.

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The intimate contest for self-command

THOMAS C. SCHELLING

You will come first of all to the Sirens, who are enchanters of all mankind and whoever comes their way; and that man who unsuspecting approaches them, and listens to the Sirens singing, has no prospect of coming home and delighting his wife and little children as they stand about him in greeting, but the Sirens by the melody of their singing enchant him. They sit in their meadow, but the beach before it is piled with boneheaps of men now rotted away, and the skins shrivel upon them. You must drive straight on past, but melt down sweet wax of honey and with it stop your companions' ears, so none can listen; the rest, that is, but if you yourself are wanting to hear them, then have them tie you hand and foot on the fast ship, standing upright against the mast with the ropes' ends lashed around it, so that you can have joy in hearing the song of the Sirens; but if you supplicate your men and implore them to set you free, then they must tie you fast with even more lashings.

The Odyssey of Homer, *Book XII, Lines 39-54. Richmond Lattimore trans., Harper and Row, 1965, p. 186.*

I do not know whether more people watched football on New Year's than any other day of the season, but I am sure that more people quit smoking. Resolutions are not as popular as a generation ago, but some of us need all the help we can get and New Year's still seems propitious for a fresh start.

For many of us, "all the help we can get" is not enough, and January is a month for recidivism too. Still, more people succeed on the

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day they can discard the old calendar than on April Fool's. In economics—the nearest thing we have to a science of choice—both those facts invite attention. Why is it so hard for so many of us, on matters great and small—being kind to our families or to our fingernails, taking up exercise or giving up coffee, turning off the T.V. or settling down to write that article for *The Public Interest*—to do the things we already decided to do and to quit the things we decided to quit? And what is there about New Year's that offers support, even if not much? What are the other times and places and tactics and techniques that we use or avoid to keep our programs on track?

People also resolve, about that time of year, to lay money aside regularly for the following Christmas. Some people are poor at saving, and a sophisticated arrangement is offered by your neighborhood bank to help overcome the problem. It is called "Christmas saving." In this plan you are committed to weekly deposits until a date in November when all the money is there, with interest, to spend for Christmas. Sometimes it doesn't earn quite as much interest as regular savings. People accept lower interest because the bank protects these funds better than ordinary savings. Ordinary savings are protected against robbery, embezzlement, and insolvency; and insurance takes care of what protection cannot. But there is one predator against whom the bank is impotent—you. For a Christmas account the bank creates ceremonial barriers to protect your account from yourself.

Some people cheat on the withholding-tax forms they fill out for their employers. They *understate* their dependents. The IRS takes more than it deserves all year—a free loan from the taxpayer—and in return the taxpayer gets a reduced shock, possibly a refund, the following April.

Many of us have little tricks we play on ourselves to make us do the things we ought to do or to keep us from the things we have foresworn. We place the alarm clock across the room so we cannot turn it off without getting out of bed. We put things out of sight or out of reach for the moment of temptation. We surrender authority to a trustworthy friend who will police our calories or our cigarettes. People who are chronically late set their watches ahead in hopes of fooling themselves. I heard of a corporate dining room where lunch orders are telephoned in at 9:30; no food is served except what was ordered at that time, not long after breakfast, when food was least tempting and resolve at its highest. A grimmer example is people who have their jaws wired shut.

People behave sometimes as if they had two selves, one who

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wants clean lungs and long life and another who adores tobacco, or one who wants a lean body and another who wants dessert, or one who yearns to improve himself by reading *The Public Interest* and another who would rather watch an old movie on television. The two are in continual contest for control.

As a boy I saw a movie about Admiral Byrd's Antarctic expedition and was impressed that as a boy he had gone outdoors in shirtsleeves to toughen himself against the cold. I resolved to go to bed at night with one blanket too few. That decision to go to bed minus one blanket was made by a warm boy. Another boy awoke cold in the night, too cold to retrieve the blanket, cursing the boy who had removed the blanket and resolving to restore it tomorrow. But the next bedtime it was the warm boy again, dreaming of Antarctica, who got to make the decision. And he always did it again.

How should we conceptualize this rational consumer whom all of us know and who some of us are, who in self-disgust grinds his cigarettes down the disposal swearing that this time he means never again to risk orphaning his children with lung cancer and is on the street three hours later looking for a store that's still open to buy cigarettes; who eats a high-calorie lunch knowing that he will regret it, does regret it, cannot understand how he lost control, resolves to compensate with a low-calorie dinner, eats a high-calorie dinner knowing he will regret it, and does regret it; who sits glued to the T.V. knowing that again tomorrow he'll wake early in a cold sweat unprepared for that morning meeting on which so much of his career depends; who spoils the trip to Disneyland by losing his temper when his children do what he knew they were going to do when he resolved not to lose his temper when they did it?

Does it matter, for theory or policy, whether we know how to characterize such behavior, even just to describe it in the language of preferences and values, choices and decisions, utility, welfare, and rationality? We could be interested in casting suspicion on the entire individualistic-utilitarian foundation of neoclassical economics by adding a large fraction of the literate adult population to that already large population disqualified by infancy, senility, or incompetence from being represented in our theory of the consumer. Alternatively, we could just be interested, as I am, in getting a better idea of what is going on and how much it matters when people behave in these apparently contradictory fashions. However we end up reconciling, if we do reconcile, these behaviors with the notion of a consumer's having reasonably stable values, knowing his val-

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ues, and having the intellectual capacity to make choices that satisfy those values, there still seems to be for many among us a problem of self-management.

The non-self-governing consumer

A striking characteristic of textbooks in economics is that the consumer is a single person. So are owners of businesses. A couple of decades ago theorists began to recognize that a board of directors or an executive staff of a corporation, not being a single person, might not make decisions like a single person, especially not like a single person who either owned the whole business or owned only a few shares of stock. Only recently has the family made an appearance. People who deal with income taxes and family welfare have always had to think of families as multiperson units, but theorists who deal with "social choice" have typically used as their model the political system, or a board of directors, rarely that ubiquitous small society, the family. The family is an income-sharing unit, a consumption-sharing unit, and a welfare-sharing unit; that is, they live off the same income, share the same bathroom, and care about each other. No wonder theory neglects the family: It complicates things enormously.

But maybe it isn't only the family that, on a close look, fails to behave like a single-minded individual because it isn't one. Maybe the ordinary man or woman also doesn't behave like a single-minded individual because he or she isn't one. Lewis Thomas, author of *The Lives of a Cell* and more recently *The Medusa and the Snail,* enchants us with the idea that private functions of our bodies are performed by autonomous one-celled creatures that don't know they are part of us and might resent it if told they were. Carl Sagan, in *The Dragons of Eden,* hints that the two hemispheres of our brains reflect different evolutionary paths, giving us two ways of perceiving our little universes. I believe as I write this that I am awake but science fiction suggests that I have no way of determining whether I am asleep and dreaming. Schizophrenia, hypnosis, amnesia, narcosis, and anesthesia suggest that anything as complicated as the human brain, especially if designed with redundancy for good measure and most assuredly if not designed at all but arising out of a continuous process that began before we were reptiles, should be capable of representing more than one "person." In fact, it must occasionally wire in a bit of memory that doesn't belong or signal for a change in the body's hormonal chemistry that makes us, at

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least momentarily, "somebody else." I am reminded of the tantalizing distinction that someone made when my wife had our first child after two hours on sodium pentathol: It doesn't make it hurt less, it just keeps you from remembering afterward. Strange that the prospect of pain can't scare me once I've seen that, when I become conscious, I won't remember!

So we shouldn't be surprised that people can act as if they were not quite singular individuals with unique identities and values and tastes and memories and sensory perceptions that display smooth continuity over time. Maybe for some purposes each of us is like two or more different identities, not switching discontinuously as in amnesia or electric-shock therapy, but with enough oscillation to affect some of those decisions that are neither binding long-term commitments nor shorter commitments so synchronized with the command cycle that the same self—that brave warm boy who dreamed of Antarctica—is always in charge.

Sometimes, but not always, it is easy to know which is Jekyll and which is Hyde. The person who drinks and becomes vicious, or a bore, and is morose about it for days afterwards; the person who continually resolves to demand that increase in pay and never musters the courage; and the person who walks into a casino for a little sociable gambling, loses more than he intended, commits more to recover it, and emerges traumatized after blowing his bankroll, all seem to present an unequal pair, a "straight" *ego* and a wayward *alter*. But even if that assessment is a fair one, it isn't so easy to judge the person whose loss of control leads to impulsive if regrettable generosity, giving his overcoat to a shivering wino or emptying his wallet into the Salvation Army bucket. The person who on doctor's orders is holding to 2,000 calories for the sake of his heart who goes on a midnight binge, stuffing his mouth as if his warden or his conscience might step in momentarily and stop him, seems to be somebody who needs a better grip on himself; but the people who out of vanity resolve to starve themselves in order to be movie thin, who from time to time decide the hell with it and have a good meal in good company, don't make it so easy to choose whose side we are on. Many of us have tried to help someone escape from a regime of austerity that we thought not only ill-founded but stifling in its consequences. And I still don't know whether, if those Antarctic dreams had come true, I'd have been better able to stand the cold and *both* boys would have been glad that the command structure gave the decision to the boy who, feeling no pain himself, could inflict it on the other.

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"The spirit is willing but the flesh is weak." That may be sufficient explanation for gluttony, some sexual incontinence, heroin addiction, or the scratching of hives. It doesn't as readily cover television or gambling, procrastination or loss of temper, or the plain lack of motivation to get on with some self-improvement regime like rapid reading or better posture or spending more time with the children. It furthermore misses the important point that the willingness of the spirit and the weakness of the flesh—or is it the weakness of the spirit and the strength of the flesh?—frequently alternate rather than coincide, and that the willing spirit, like a loving parent (or like a punitive one), can try to isolate or immobilize that mischievous self that periodically takes charge. Furthermore, the "flesh" often seems endowed with as ingenious an intelligence and command system as the allegedly stronger "spirit," in evading or overcoming the stratagems of the spirit. And maybe, memories of pain and discomfort being of notoriously low fidelity, the "willingness" of the spirit to resolve on some arduous program is only a sign that it's easy to be brave when the danger is remote.

One model suggested for this ambivalence in choice would let the two selves—or the several—differ along a single dimension amenable to economic analysis. That is the dimension of time preference—of the discount rate to compare present with future, near future with far future, imminent with remote, or permanent with transient. The idea is that the person who takes that drink or lights that cigarette or digs into that Boston cream pie is merely discounting the future with a high interest rate. Resolving in late December to begin running three miles before every breakfast in January is a future-oriented decision, especially if the benefits are reduced mortality two or three decades from now. The same is true with reducing weight. The person who then fails to get up some January morning to do that stint before breakfast, or who eats and drinks 3,500 calories at a party on January 10, has merely shifted gears in his discount system, undervaluing that second decade compared with tonight or this morning.

In a study of discounting that may be a good way to treat the person who lives, as they say, "like there was no tomorrow." It's the way we say, in an economics textbook, that you can always grow bananas in a submarine: The price would simply be so high that you may as well call it infinite. But the person who is simply not thinking of the future, who shuts his eyes to avoid it (especially when the future is not a decade away but tomorrow, when he knows he'll suffer remorse and disgust and the disapproval of fa-

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mily and friends who witness the collapse of resolve), like the person who furiously scratches his hives, would have to be someone whose time discount is 100 percent per hour or per minute, compounding to an annual rate too large for my calculator. It isn't clear whether the straight fellow who resolves to run three miles before breakfast enjoys such a far horizon that he can appreciate the benefits of elderly good health, or merely has such a short memory that he forgets how disagreeable it's going to be, every morning in perpetuity, to spend 30 minutes gasping for breath.

The art of self-management

The name "economics" comes through the Latin *oeconomia* from the Greek *oikonomia,* meaning household management (*oikos,* house, and *nomos,* managing) and still has some of that meaning in its variant, "economical." My suggestion is to recognize a comparable art or science of "self-management," possibly as part of economics—or possibly not, but related. Maybe we could attach the Latin *ego* to the Greek *nomos,* and make *egonomics.* What scope such a discipline would have I don't know. I am interested only in the part that might be called *strategic egonomics,* consciously coping with one's own behavior, especially one's conscious behavior. As a motto, David Hemenway has suggested, "No Thyself!"

My suggestion is that we get help from comparing self-management with the way one tries to manage another, another who is in a special relation to one's self. Many of the skills and maxims and stratagems for coping with one's own behavior become less mystifying and more familiar if we can recognize them as the same principles and stratagems that apply to managing someone else—someone in a close relation, with a paternalist or senior-junior quality like that between parent and child, teacher and pupil, missionary and convert, master and apprentice, or guide and follower.

I don't intend anything mysterious or philosophically profound in this notion that some intriguing parts of strategic self-management are like coping with one's own behavior as though it were another's. To emphasize that I am dealing with mundane issues, familiar to us all, with no deep meanings intended and no necessary intention of questioning what the "self" is or offering an answer, let me begin with some cases remote from smoking, drinking, eating, gambling, jogging, and procrastinating, in which the question what one "really" wants doesn't intrude. What do you do with a child that scratches in its sleep?

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Usually scratching is thought to be dysfunctional. Whether it is hives, chicken pox, mosquito bites, or poison ivy, doctors worry about infection; and most of us, especially parents, have observed that any momentary frenzied relief from scratching is followed almost instantly by enhanced itching. Many of us learn to resist the temptation to scratch. But not in our sleep.

Mittens are an answer. (Closely-trimmed nails are another.) Suppose it's not a child but your adult self: You are as likely to scratch as that kid, once you're asleep. I suggest mittens. If you don't think of it yourself your doctor will; it beats having somebody tie your hands to the bedpost. (Even that's better than scratching if you haven't any mittens.) There doesn't seem to be much difference between tying mittens on a child's hands to make scratching innocuous and tying mittens on your own with the same intention. Either way there is "somebody" who in his sleep will lack the discipline or the awareness to do what "he" might have wished to do, namely to abstain from scratching. Treating your sometime self as though it were somebody else is a ubiquitous and familiar technique of self-management.

Where else do we find it unexceptionable? There's an endless list of occasions, some important, and once I start the list any reader can extend it. These are cases in which there is a genuine problem of managing one's own behavior, and in which the control process is such that the "manager" is not always in charge, especially not when management becomes a problem. And in such cases the ways that one attempts to cope, while in charge, with the problems that will arise when that other self is in charge (or when no one is in charge) are like—not identical with, but like—the ways one would manage another.

My interest is focused at the more conscious strategic end of the spectrum, where all but the most doctrinaire would describe behavior as voluntary and conscious. Usually, though not always, lighting a cigarette can be characterized as voluntary and conscious, or accepting a first drink, or ordering dessert, or buying an expensive piece of jewelry to please a salesperson, or agreeing to perform an onerous task when it keeps one from facing another that is more fearsome and more urgent. It is not quite so evident that flying into a rage is "voluntary" and "conscious." Or biting fingernails or slouching into an unattractive and unhealthful posture. Or turning off the alarm half asleep and failing to get out of bed. Or slamming on the brakes when the car skids on snow and braking is exactly the wrong thing and you know it. Averting one's gaze under interroga-

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tion may be conscious and voluntary, blushing perhaps not, and the electrical conductivity of the skin of one's palm may be impossible to control without training. My idea is that in the detached way that we can approach management problems near the unconscious or involuntary end of the scale, including some of those that involve physical and mechanical props as well as environmental manipulation, we can more casually approach those behaviors that are indubitably "voluntary," substantially conscious, and more than trivial.

Sleep has already been mentioned in some connections and there are more. I mentioned scratching in sleep; there is removing bandages, suffocating an infant, rolling off a ledge, snoring, talking (either noise or information), and, though it has gone out of vogue in the last 40 years, sleepwalking. In some circumstances resisting interrogation is important while asleep. Then there is awakening—both hearing the alarm (or the baby's voice, or the intruder's footfall) and overcoming those sometimes overwhelming forces when the alarm goes off. And staying awake: Sentries have been shot, truckers burned, watchmen bypassed, babies neglected, and tasks unfinished when people—voluntarily? consciously?—let their lids droop or fell asleep with their eyes open or even lapsed only a few seconds from full awareness.

Panic is another. Public doors now have panic bars to open them; horses are blindfolded to be led out of a burning barn. Alcohol and other tranquilizers are regularly used to induce bravery on the battlefield and calm among airline passengers. Carl Sagan even proposes that sleep can insulate an organism from that awareness of danger that might cause it to panic and reveal itself, or to breathe harder and emit more telltale carbon dioxide.

For stagefright, I know people who use tranquilizers, both those sold at the drugstore and those served before dinner. Albert Edward Wiggam wrote *The Marks of an Educated Man,* which I read as a boy when I was trying to improve myself. He'd been inspired by William Jennings Bryan and wanted to be an orator as badly as I wanted to explore Antarctica. But when he faced an audience he blacked out. It lasted only a minute, but not many audiences would wait a minute. Wiggam memorized a story to begin every speech with, memorized it so well he could tell it in his sleep or while engaged at other things, and, he hoped, during the blackout that would occur as he walked on stage. He knew his career was secure at that glorious moment when, recovering consciousness while standing before an audience, he heard himself finishing the story just in time to enjoy the laughter that he had earned with such effort.

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What about vertigo? Although it won't work if you have to drive a mountain road, shutting your eyes helps. If I have to carry you piggyback over a chasm, I may blindfold you; if I don't think of it, you may tie your own blindfold. Odysseus' sailors could just as well have put the wax in their own ears.

Absent-mindedness is a funny one. Whether you tie that string on somebody else's finger or on your own, you do it for the same reason and with the same expectation. All of us have been at meetings where someone's wrist alarm or pocket beeper went off. Most people run out of gas while surrounded by service stations.

Anger is a condition in which we may on impulse do the wrong thing. "Count to ten" is a principle that can be applied in many ways, to oneself as well as to others. And a multitude of phobias invite management efforts to overcome some powerful immediate inhibition--diving off the high board for the first time, or getting fluid syringed out of one's knee with a four-inch needle.

Some of these problems of self-management are joint among two or more people. Consider giggling. If somebody sneezes at a lecture I'll exclude the sneeze from the "behavior" we're talking about, and if two people talk to each other I'll consider it bad manners rather than bad management; but if two children giggle every time they catch each other's eyes it can become painfully hysterical, beyond control once it starts. Not looking at each other helps, not sitting where they can see each other helps more, not going to the same event is still better. When I watched "The Death of Chuckles the Clown" on *The Mary Tyler Moore Show* with a group gathered to study a sample of programs, the 20-minute spasm of uncontrollable giggling spread to many of us viewing it. I'm sure I'd have kept my decorum if I'd seen it in private.

Stark cases

Science fiction can clarify principles by inventing stark cases. I propose two. The first involves pain. A person is to be subjected to intense pain that will last five minutes no matter what he does, and 25 more if he does nothing to stop it. He can stop it after the first five by banging his fist on a button. If he hits the button and stops the pain before 30 minutes are up, the process will be repeated the next day, and the next, forever until he endures 30 consecutive minutes. Any day he lets the pain go on for 30 minutes it will end; it's over forever and he's released. The pain is to be as severe as it can be without making him incapable of hitting the button or un-

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mindful of the button, and if necessary he'll be trained to hit the button when he wants to stop the pain.

I offer three observations. First, there may well be people, possibly most of us, "shortsighted" you may call us (or "high discount"), who cannot endure the extra 25 minutes without hitting the button —ever.

Second, if I were the victim and you were my friend and you had an opportunity not to disconnect the pain but to disconnect the button, so that I could pound my fist for 30 minutes and never stop the pain, you would disconnect the button. And afterwards I would thank you.

Third, if at any time during the interval I can disconnect that button myself, condemning myself to the full 30 minutes of pain, I expect that I would do so. I hope that I would. And only my worst enemy would reconnect it in time to insure the next pain session.

My second example is less artificial. It is deciding in advance on the circumstances in which one might wish to be dead though in danger of going on living. It is particularly poignant if carrying out the decision will require the help of someone whom I may then beseech to disregard what I earlier decided. I ask you in advance to see that I die if certain conditions befall me and to disregard any change of mind that the fear of imminent death may induce; if I become terrified of dying you must not prolong my terror. We confront that question, which is the authentic "I"? There are two of me, one who was in command when I made the arrangements, gave the instructions, and warned you not to heed that other one who might surface and speak with my voice when it was time to die. How do we tell—how do you tell—whether this is the moment of truth or the moment of derangement?

This is the problem of authenticity that arises when someone addicted to alcohol, drugs, or cigarettes, or a compulsive overeater, asks you under no circumstances to heed a plea for a smoke or a drink or a dose or another helping, even if he pleads with tears. Indeed, the more frantically he pleads the more you may be enjoined to recognize what a horror you perpetuate, while momentarily relieving it, if you accede.

Even if at that time I still want to die I may need help. (I do not believe it possible to hold your breath and die; the urge to breathe overcomes the urge to die, however much you regret it once you've caught your breath.) So I propose this piece of technology. A specific contingency in which many people wish they would die is a massively disabling stroke, a stroke that leaves one bedridden, in-

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articulate, incapable of recognizing faces. Some of us may wish to die because of the horror or indignity, some to remove a penalty that no one would wish to inflict on the family. Suppose there were a diagnostic contrivance that could be implanted in the brain that, in the event of cerebral hemorrhage, would measure the severity, remaining inactive if the predicted paralysis were less than some limiting value but aggravating fatally any condition above that limit. With the device implanted I needn't lift my hand to take my own life. You needn't help me, nor need you try to stop me. My doctor can't save me and needn't try. It is prearranged and automatic.

My conjecture is that the device would be attractive to many of us. Further, that it would be less attractive if it were designed so that it could be, and had to be, activated in the event by the victim.

Management skills or moral fiber

The situations I discussed, including the artificial ones, are background. They are to remind us that there is nothing strange or unfamiliar, let alone mysterious and inexplicable, about people regarding themselves as problems of discipline, control, or motivation and taking measures: to insulate themselves against stimuli, to disable themselves with respect to actions, to change the rewards and penalties that attach to behaviors, to submit to the control of others and to surrender the power to decide for themselves on occasions when, their internal mechanisms having changed or become susceptible to alteration, they would make a decision that now they deprecate. If people can drink alcohol now to be braver in an hour, without straining our credulity that somebody could wish to alter his own perception of what is at stake in a decision he has to make shortly, declining a drink now the better to appreciate what is at stake when he decides in an hour on the chocolate mousse or the cigarette that follows, needn't puzzle us either. It isn't much different from declining to offer a drink to a friend who is trying to quit smoking, when a little alcohol in the blood tends to shift his preferences toward nicotine and away from longevity. Leaving one's money at home in case of thieves on the road, or creditors, or friends in need of loans, is not altogether different, judged as plain financial management, from leaving it at home for fear of the temptation to spend it.

The advantage of looking at self-management in this light is a simple one. There are many tactics and techniques employed successfully or unsuccessfully to influence and constrain the behavior

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of others. We have some familiarity with them, in diverse areas ranging from child discipline to military discipline, school discipline and religious discipline, athletic training and the care of institutionalized patients, the managing of parolees and, somewhat vicariously through books and movies, the preparation of espionage agents who, for example, can't blurt out under painful interrogation the names of people whose names they do not know or cannot write a recognizable signature if they can arrange to crush a hand in a doorjam.

What I'm talking about is different from what is usually thought of as self-control or self-discipline. I am not talking about the development of inner strength, character, or moral fiber, or the change in values that goes with religious conversion. Nor am I talking about education in the consequences of behavior—lung and heart disease from smoking, spoiled careers and families and livers from alcohol, higher mortality from abandonment of a medicinal regime for hypertension, or the self-aggravation of habits like card playing or television.

Some distinguishing characteristics

It is one thing to appreciate the general idea of tactics deployed to protect oneself from oneself, and the ubiquitousness of the problem. It is something quite different to focus on a specific problem, and to do so not to illuminate a general principle but to cope with the mischief at hand. For that we need a systematic way of analyzing the habit or weakness along relevant dimensions: the vulnerabilities of its victim, the environment in which it occurs, and the information, communication, and institutional commitments that can be brought to bear.

I do not know any taxonomy or analytical scheme for finding the similarities and highlighting the differences among the different habits or addictions and the targets they afflict. I can only illustrate the kinds of analytical dimensions I have in mind.

One relates to the timing or "time profile" of the habit or addiction. We can distinguish the afflictions, temptations, or habits that 1) occur at random, unpredictably, providing no free time or "time out" but which are not continuously present; 2) occur cyclically, on a schedule that is physiological or that reflects the daily or weekly pattern of living, or on some cycle autonomous to the habit itself, a cycle of onset and exhaustion and recovery; or 3) are continuous, ever-present, neither waning and waxing nor coming by surprise.

Another temporal dimension is the "time to indulgence," or "onset

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time." This is ambiguous and yields only an order of magnitude. It is the time from the moment of suggestion or temptation, or of yielding or decision, to the act that constitutes the offending event. It is how much time intervenes during which succumbing can be impeded or the victim dissuaded or a warning sounded or help mustered or some mode of rescue mobilized. For smoking, the time is seconds or minutes, according to where the nearest cigarette is; for alcohol it is minutes to hours, according to whether one is at home or on the street, at work or on the tennis court, alone or with somebody, the time of day, and whether alcohol is handy. Scratching takes seconds; eating takes minutes or hours, again as with alcohol depending on whether one is driving on the freeway or sitting in his own kitchen. If only another piece of toast is at issue the time is in seconds.

Here is where abstaining and persevering are qualitatively different. A person can often quit exercising promptly—unless he is hiking a mountainside or rowing far from shore—but it may be possible to resume if you quit. Determined to run a couple of miles you can quit at a mile and a half, but after a few minutes get back on course, possibly doing a little extra for good measure with no irretrievable loss. Unsmoking a cigarette is harder.

Still another measure is "warning time." If there are early symptoms, harbingers of the motivational onset, or signals that precede the stimuli, there may be a period in which protective measures are still available, either to the victim or to others concerned.

There are physical characteristics by which to classify some substances or compulsive behaviors. Weight and bulk, portability and privacy are significant. It is easier to carry cigarettes than a coffee pot. Pipe and tobacco are more easily carried in a sport jacket than a tuxedo. People whose addictions require pool halls or swimming pools, slot machines or record players, television sets, chess boards, card tables, or a bed or bench are not as continuously and universally free to indulge their habits as the people who have their tics and fingernails and eczema always with them.

Money is important. Heroin is "artificially" costly on account of denial; anyone addicted to the best Beluga caviar or the rarest of perfumes has a different problem than someone addicted to chocolate. Indeed if cigarettes cost as much as Havana cigars, there would be little concern about smoking.

Visibility or detectability is important for habits whose indulgence is illicit or disapproved. A couple that cannot resist squabbling may wisely stay among company; lunching where no liquor

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is served avoids the risk that one can be cajoled into a first drink and thereby lubricated into a second. There is an interaction between legal or social status and visibility or detectability.

Another way to classify a habit or addiction is by the "damage function." Is the risk or damage a cumulative total, or geared to current activity? With smoking, the cumulative total determines lung cancer, and probably current absorption determines the monoxide damage. Behavioral dangers from alcohol—driving, fighting, and abusing children—are certainly current, while damage to liver, stomach, or throat is cumulative. Cumulative damage can be continuous and linear, or there can be some threshold below which the habit is harmless or a plateau beyond which all the harm is done. (This is the same issue that arises with risks of cancer from nuclear radiation or coal-burning emissions.)

With both current and cumulative damage there is the "decay rate." If a smoker quits at 50 does the risk of cancer or heart disease diminish, relative to what it would have been with continued smoking, or is the damage irreversible? If it declines, does it diminish promptly or slowly, toward zero or some compromise level, and linearly, exponentially, or with what shape over time? Evidently calories, cholesterol, and tobacco are strikingly different in these respects: the distinction between cumulative and current shifts on a time scale of hours, minutes, weeks, or years. Momentary drunkenness is "current" in days but "cumulative" in quarter hours: The decay rate of blood alcohol, and the tendency of alcohol to be neither imbibed nor assimilated instantaneously but over some fractions of hours, makes the process current or cumulative according to our time perspective. Calories and weight are cumulative in the laws of thermodynamics and the time perspective of people gaining or losing; but a professional athlete who trains six months out of the year and relaxes the other six may think of abstinence and minimum weight as concurrent rather than cumulative.

Still another dimension is whether the habit is autonomous or self-aggravating. Is there "feedback" between indulgence and the ensuing intensity of the affliction? By most reports the withdrawal symptoms of tobacco, especially the craving, diminish but not always immediately, with a "half life" measured in days for some and weeks or months for others, diminishing to zero for some but remaining above for others. An associated question is the speed with which the habit is reconstructed if the behavior is resumed. Some smokers, but not all, appear to revert virtually to where they were before they quit. It is never reported that a veteran smoker who

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quits and takes it up again smokes like a novice. So we distinguish, for those who quit some habit, the time scale on which withdrawal symptoms disappear and the (different) scale on which all effects disappear permanently—if they ever do. The controversies over "controlled drinking" for former alcoholics involve these different diagnostic time scales.

Another dimension is consciousness. This, too, is ambiguous. Nobody who smokes is unconscious that he smokes, but smokers do light cigarettes "unconsciously" and "awake" to wonder when they lit them or where they found the matches. But unlike the skin affliction that one can scratch unconsciously any time, cigarettes can at least be left behind or unpurchased so that one is unlikely to smoke unconsciously during a non-smoking campaign. Daydreaming is a debilitating habit for some people, and usually by its nature unconscious. So with posture, speech habits, and a multitude of cosmetic and other mannerisms that can be unconscious simply because they are always and everywhere on instant call. We need terminology to distinguish the person who is consciously losing his temper but unconscious that that is what he is doing. The person who, losing control, is accused of losing it, of overreacting to the occasion, and who answers that his behavior is precisely in accordance with what the situation demands—scolding the child or the waiter or the other driver, raising his voice, losing his temper, fighting the appliance he is trying to repair, or driving with too much abandon—might be said to be "conscious" of his behavior but not conscious of an incongruity of his behavior with its occasion.

The size of the problem

If we think of our subject as part of or akin to economics, we ought, as economists do, to ask whether the problems here are big ones or little ones and how to measure their magnitude. Is it a trivial matter of two or three minutes wasted reading the comics, or of cuticle picking and hair twirling and other compulsive "grooming" that represent minor cosmetic ailments or major discomforts, but rank well below arthritis as a scourge? Or is it a substantial problem of health or productivity?

We can try smoking for size. The serious consequences of smoking are fatalities due to heart and lung disease. Estimating the social cost of early death due to smoking usually leads to the result that the costs are large and fall on the smokers, or on the smokers and those who care about them. But they don't inflict a lot of cost on

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their fellow citizens, since the incidence of chronic, expensive illness among them—whether paid for publicly through Medicare and Medicaid or shared quasi-publicly through Blue Cross—is fairly low. There's nothing quite like a heart attack for wiping people off the Blue Cross and Medicaid rolls just before they begin to enter the expensive age; it tends also to knock them off just about when they've made most of their contributions to social security, but haven't collected much. They die when their children are grown, and don't leave families on welfare. And there's not much to do for lung cancer except ease the pain; it, too, hits at an age, at least historically among its male victims, that pretty nearly minimizes the costs or even maximizes the financial benefits to the rest of the population. So to appreciate the nature and magnitude of the problem that tobacco presents we should measure it for the people who smoke. (Some who do not smoke suffer from the carbon monoxide of those who do, and a few will be burned by hotel fires when a smoker falls asleep, but these do not add to enough to make smoking mainly a problem of "external damages.")

Surveys in America and in England indicate that most people who smoke—not everybody, but a majority—have tried to stop. The Surgeon General has been warning people for two decades that smoking is bad. Just about everybody knows it. If there were some way that cigarettes could be reliably put beyond reach, and people could vote on whether they would like that done, my guess is that a majority of smokers would elect to deny themselves the possibility of lighting another cigarette. How much might they pay for the opportunity?

Hardly anybody thinks it could be done, and neither alcohol in the 1920's nor marijuana in the 1960's makes the effort look promising. Those who didn't want the ban would offer a market for contraband cigarettes; nobody has an idea how to suppress such a market; and if the market is there the smokers who favored the ban will be little more able to resist cigarettes than they used to be. Even if the abolition were unanimously approved, people would know that if they could sneak in a few cigarettes people would buy them; there would be a black market, and people who wished the market didn't exist would patronize it.

But suppose there were a reliable way to quit cigarettes—to quit even wanting them—without torment or suspense or loss of privacy or any restrictions on mobility or any physical side effects. What would it be worth to those 50 million smokers out there, and to some of those 30 million former smokers who may need help to keep from

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backsliding? Let's postulate an immediate market of 30 million customers for this painless and reliable way to stop smoking or, having stopped, never to return. If the people who wanted to quit smoked as much as those who wished to continue, these 30 million would-be quitters would spend about $10 billion per year on cigarettes. If smokers expect—in the absence of relief—to smoke another 15 or 20 years, and if they discount future savings at a "real" rate of interest (after adjustment for inflation) somewhere from 4 to 10 percent per year, and if at a minimum they would value relief from smoking the way they would value the fuel-oil savings from warmer weather, we can put a minimum valuation somewhere around $100 billion. "Minimum" means only the saved *expenditures*.

We can only guess what people would pay to be relieved of the nonfinancial costs associated with smoking—the cleaner teeth and cleaner ashtrays and freedom from a "habit," and especially better health and longer lives—and what people would pay to help spouses, children, parents, and friends to be rid of a deplorable and dangerous addiction. We don't know, because they don't know. (Some of "us" are "them" and we still don't know.)

An alternative question is how much smokers would pay for something that, with little impairment of their smoking pleasure, would make the habit safe and so certified by that Surgeon General who otherwise tells us that smoking is dangerous.

My conjecture, which you may compare with your own, is that the worth of being free of smoking, or free of the consequences, is far greater than the financial savings on cigarette purchases. If that is so, the benefit from a suspense-free, torment-free, *reliable* method of quitting, discounted to the present for three-fifths of today's American smoking population, would be a sizable fraction of a trillion dollars. This is only the worth to people who already smoke and excludes our children who, not yet smoking or not yet wishing to quit, might be customers for that reliable self-management regime in another 15 or 20 years.

I am not thinking of what the market would bear if I could monopolize a nicotine chewing gum that eliminated the need to smoke, merely trying to get some sense of whether there is a consumer problem here of real magnitude.

Smoking is only one of several addictive or habitual behaviors that people engage in, but it is the best example of one that is widespread, meets no known physical need (except for people who have already acquired the habit), is known to be harmful but only in the statistical long-run, is hard to quit, and that most people might like

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to quit, especially if they could be relieved of withdrawal discomforts, *but very likely might like to quit even if they had to suffer withdrawal if only they could be assured of success.*

Going through a little more conjectural arithmetic I find it easy to arrive at the conclusion that these problems of consumer self-management can easily be on the order of a trillion dollars (lump-sum, discounted value) for the current population of consumers. But it doesn't matter whether you come out with one-third of a trillion or three trillion. On an annual basis, again just for the purpose of suggesting order of magnitude, it is more like a $100 billion per year than $10 billion.

What does that make it as big as? These days one is tempted to say it's about the size of the energy problem, but that is a comparison only in gross magnitude and we don't need it if we've already got the magnitude. I propose that people concerned about consumer ignorance, about the inability of consumers to budget, the inability of shoppers, especially poor people, to spend money wisely, and about the consequences of misleading advertising—including the advertising that convinces people they feel bad or smell bad and need something that comes out of a spray can or a medicine bottle—all together add up to no more than the inadequacies of consumer self-management. In other words, if people could reliably do, or abstain from, the things that in their serious mode they resolved to do and to abstain from (or would resolve if they didn't give it up as hopeless), it would make as much difference in the aggregate as if all those other familiar problems of consumer ignorance and budget management could be dissolved away. (I am excluding from the comparison the deeper issues of consumer satisfaction raised by Tibor Scitovsky in *The Joyless Economy* and by some sociologists about the origin of tastes.)

Some tactics of control

Let's go back to that New Year's resolution. What is its appeal? Why does it sometimes work?

There is evidently some "investment" in a New Year's inauguration. Since the days of the Druids the mid-winter solstice has been a time of new beginnings, not an occasion to be wasted. Fail this time around and you lose a year. Deciding earlier and waiting for the day the leaf is turned affords some psychological preparation. If there is any way that a person can persuade himself that he really means it this time, a birthday or a new year or the first day on

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a new job offers a discontinuity, a break with the past. There may even be a little magic about it. Doing it New Year's, even writing it with lipstick on the bathroom mirror or carrying the printed resolution strapped to a wrist, one impresses oneself with the seriousness. It raises the stakes. More is threatened by failure than just the substance of the resolution: One's personal constitution is violated, confidence demoralized, and the whole year spoilt. At least one can try to make it so.

The mechanism is more obvious when one announces to family or carpool the renunciation of alcohol, tobacco, or potato chips—especially when several weeks are devoted to preparing everyone for the starting date. Shame is a deterrent.

Ideally, there might be legal arrangements. One goes to the town clerk and swears out a resolution, paying the cost of publication, posting a reward for evidence leading to one's own conviction for violating the terms of the oath just sworn. I suppose it would be unenforceable, there being neither damages nor a valid contract. But one might authorize "citizen's arrest"—a "Good Samaritan" immunity—inviting the use of all necessary force to keep the pledged party from cleaning out the dish of peanuts, with the prospect of a reward being volunteered in later gratitude. If the courts are closed at the times of day that one self might then sue for release from the involuntary bondage to which the other self has committed him, he successfully makes himself an outlaw for bounty hunters with respect to the particular transgression he foreswears. And who can protect his rights if, forcibly prevented at midnight from violating his pledge, he is satisfied next morning with his involuntary salvation (like that boy who sent me to bed without a blanket) and turns down the importunate civil-liberties lawyer.

New Year's is also an answer to the question, "When?" The question is especially in need of a firm answer when the correct answer is "already." It is comparatively easy, any old Thursday that one planned to begin getting up an hour early, to perceive clearly when the alarm rings that the weekend is a better time to initiate such things.

Walter Lippmann's "plate glass window" that deters the sidewalk thief—and characterized American troops in post-war Europe—is a useful principle for self-management. Clearly marked lines, unambiguous rules, straightforward principles that cannot be made ambiguous by even the most inspired casuistry, are the stuff with which "salami tactics" are rebuffed. Just as it may be easier to ban

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nuclear weapons from the battlefield *in toto* than through carefully graduated specifications on their use, zero is a more enforceable limit on cigarettes or chewing gum than some flexible quantitative ration. (There was a time when I allowed myself tobacco only after the "evening meal." It worked well but led to tortured reasoning Thanksgiving afternoon, or flying west across the Atlantic with perpetual afternoon, and it stimulated lots of token sandwiches on leaving the ski slopes to drive home.)

"Precautionary rules" can be effective. Many annoying and unsightly small habits, involving face and fingers, are associated with "precursor" explorations, touchings and fingerings that are resistible themselves but lead unawares to irresistible sequels. The victim is often unaware of the relation between innocuous, non-compulsive behavior, and the trap that it leads to. People who wish to quit smoking sometimes discover that, at the outset anyhow, it helps to give up alcohol too, it being easier to rationalize the after-dinner cigarette when one's thoughts have been clarified by a few glasses of wine. And those wonderful folks who brought us potato chips are so sure of themselves that they dare us on television to eat one and stop. Just as children are best kept away from the water if you don't want them to swim, and infants best taught never to open the cupboard where soaps and poisons are kept, avoiding the cue or stimulus or trigger is important in drug therapy and dietary regimes and in the treatment of gambling fever. I have often wished that for a small addition to my bill the hotel would disable the television in my room during my occupancy.

There is one family of tactics common in interpersonal relations that is peculiarly unavailable, or nearly so, in dealing with oneself. That is deceit. One can indeed throw a key into the darkness where it cannot be found until morning, putting the locked cabinet or the car's ignition beyond reach, but it is hard to hide something and forget where it was hidden, especially when it has to be available for finding at some legitimate time.

It is also hard to motivate abstention by tricking oneself to believe that the risks have become truly prohibitive. It is reported by drug therapists to be a source of relief and reduced discomfort to an addict just to know, once the acute stage of withdrawal is past, that there simply is nothing available. Doctors report that when patients are flatly told that their condition makes it imperative they cease smoking at once, the patients quit not only more reliably than when they are left any choice, but far more comfortably. Continual indecision, or continual deciding or resisting temptation, ag-

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gravates both the discomfort and the temptation; and anyone who wishes to quit should wish to be told with finality that, though he is healthy in other respects, his next cigarette will kill him. Although his doctor could deceive him—probably won't, but could—he cannot deceive himself, and probably cannot credulously instruct his doctor to deceive him.

Parole systems offer an interesting model. So do the modern technologies for medical monitoring, including the more fictional devices that ring a remote alarm or release a stupefying drug or electric current upon some kind of arousal in the monitored patient. The parolee who must show up once a day, or phone in every three hours, or stay in somebody's custody on pain of that person's being treated as an accomplice, may be physically able to escape surveillance but deterred by the certainty of apprehension. Whenever the foresworn activity is inherently visible, arranging for no escape from public places may be a sufficient way to incapacitate oneself.

For positive performance there are other tactics, some quite opposite to those for abstention. For example, breaking a large task, such as a Ph.D. thesis, into small pieces to make the goals more proximate and the magnitudes less intimidating, even setting time limits rather than piecework goals, works for some people. Kafka's "Great Wall of China" required motivating people toward a task that could not be completed in their lifetimes; learning a new language, or a new athletic game, eventually entails a long hike on a seemingly infinite plateau. Round-number targets help motivate the joggers; and if there is no unique distance between two miles and five to offer an intermediate goal some runners joyfully discover the metric system with its handy five-kilometer distance. Even the weakness that takes the form of discounting the future—actually, more like averting one's gaze from the future—can be turned to account: Medium-distance deadlines look so unthreatening that people welcome them, even plead for them, knowing that without them "today never comes" and the promised task will never be done, perhaps never started.

I have come across an interesting case in which three "people" seem to be involved—three of me or three of you. It is the offering of modest rewards or punishments, and it goes like this: The person tells himself that he may sleep late and skip the exercise regime whenever he wishes but only on condition that he forego lunch, or a favorite program, or a weekend skiing; alternatively he promises himself that every day that he gets up early he can

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watch five innings of baseball on the tube. Now, this scheme works only on two conditions. First, that the reward or punishment be potent enough to induce the desired behavior; and second, that the "somebody" who wants to turn off his alarm with his eyes closed will believe that another "somebody" will later have the fortitude to administer the punishment or deny the reward, when "they" are really all the same person. People told me it worked; I tried it and found that it could. If A lacks the fortitude to get out of bed, B has the fortitude to do without baseball because C laid down the law at an earlier time. If I cannot directly make myself get up at the alarm, I can nevertheless make myself inflict some worse privation later, contemplating which I get up with the alarm! It sounds like something a decision theorist would describe as "intransitive."

Something similar is involved in a mandatory delay system. Imagine that monitoring device that will inflict pain the moment it detects nicotine in my blood, but that I can disable on three hours' notice. Desperate for a cigarette I throw the switch so that in three hours I can safely smoke. Any time within the three hours I may suffer a resurgence of resolve and reset the mechanism, setting the timer back to three hours. If I can never go three hours without losing control to that tyrant who wants me to quit, he'll get his innings and when he does he'll turn the timer back. But it works on the honor system too. There are people who can wait, but not forever; they allow themselves to smoke (or eat or drink or some other indulgence) whenever they wish *with a specified delay*. In a moment of truth, realizing they should never have taken such an ill-conceived oath, they declare their abstinence at an end and have only to wait then the specified number of hours to be free. Just knowing that they are never more than three hours from a cigarette helps them avoid panic; they rarely invoke the escape clause, though, and when they do they almost always—before the waiting period is up—withdraw the notice they filed.

That comes close to deception. The patient might not submit to the discipline of waiting three hours if he knew that his petition would be challenged and withdrawn before the three hours were up—indeed that that was the whole purpose of the scheme. Somehow it works, at least occasionally. How to describe the collusion is beyond me. I have spoken to distance runners who, as exhaustion approaches, pick their stopping places a mile in advance with the rule that any place more distant can be picked at any time before they reach the current target, and once picked even

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by the most fleeting resolve it becomes controlling. I think I know whose side I'm on, and I'm sorry for him.

One of the central dilemmas of self-management is epitomized by titles like *You Can Stop.* You can, perhaps, if you believe you can, and the title, *Maybe You Can Stop—You'll Never Know Until You Try,* is an invitation to failure. Raising the stakes in the game, by investing one's self-respect in a campaign that is sure to try one's steadfastness, is a risky business. Failing in January is worse than failing in April if the New Year's launching was billed in advance as the ultimate test of one's worthiness. Once a threat of reprisal fails to induce the desired behavior and the punishment has to be inflicted, one can only regret the whole attempt. That is particularly true in coercing oneself, when both parties share the same values and feel the same remorse.

Furthermore, the suspense seems to be the worst of it. Continually resisting temptation, watching oneself anxiously, talking oneself to the brink of rebellion and painfully getting a grip, allegedly is itself what eventually becomes unendurable—the anxiety, not the withdrawal, or the anxiety and not the pain of continuing on course or up the mountain. Failure takes the form of a desperate dash to freedom. Not freedom from the pain of continuing, or from the hunger and privation, but freedom from suspense, freedom from indecision—or, better, from perpetual unfinished decision, freedom from intense and unremitting self-regard and responsibility. And in a few cases, such as becoming intoxicated, one escapes the ordeal and the remorse as well.

Ben Hur didn't have to make himself keep rowing. The man with the whip took care of that. Some people who run for exercise discover that the fear of quitting—not the fear of running painfully, but of quitting—becomes so severe that they are tempted to quit to get rid of the fear. Once they've run the course the mental agony is gone and the physical agony bearable; so they treat themselves at the end to a little extra when, anxiety gone and nothing at stake, they can at last run for the fun of it.

Building confidence is part of many regimes. Break a few easy habits before going on to the hard ones; quit a few to convince yourself you can; talk to people who succeeded, not who failed, and "psych yourself" into believing you'll inevitably do it. At least, that's the advice you get from those who want you to try, including those who will help you for money. It apparently enhances the likelihood of success. (Whether it makes failure more catastrophic, we're usually not told.)

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The empirical science of self-management is not much further developed than the theoretical egonomics. Still, there are grounds for optimism. Since the Surgeon General's findings were first made public, the number of cigarettes per capita stopped increasing and has decreased slightly. The tar content has declined markedly. In my own census group, males 45-65, the proportion that smokes is declining 4 percent per year, or one-third per decade, and among males that age who read this journal—among males who wear neckties—the residue of smokers is diminishing with a half-life of a decade. (Not dying, just giving it up!) Old hotel employees remember when after an all-day professional meeting they emptied the ashtrays into wastebaskets; now they empty them into an ashtray.

The news is bad about some other population groups, and I am not being cheerful about epidemiological trends. But 30 million people did quit. We have no good information on how many times they quit, or even how many of them just hadn't had a cigarette for a whole day when the interviewer rang the bell. But there's a lot of information out there on our subject.

Meanwhile, I fell off the wagon in mid-January, but climbed back aboard on Ground Hog Day. With any luck the manuscript will reach *The Public Interest* in time for publication.

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The war on testing: David, Goliath & Gallup

BARBARA LERNER

DESCRIBING the key New York State legislative battle in the war on testing, Edward Fiske, education editor of *The Times,* wrote last October that it had "the appearance of a David-versus-Goliath matchup. On one side, looking relatively weak, were representatives of a coalition of student and consumer groups. On the other was the giant $150 million-a-year testing industry, represented by some fancy Albany lawyers."

Claimed power discrepancies notwithstanding, what Mr. Fiske was pleased to call "the biblical scenario" in New York was repeated elsewhere, adding to the lengthening string of legislative and judicial victories that has brought the coalition of anti-testing forces within sight of its publicly announced goal: the elimination from American life of all objective standardized tests of academic and vocational competence.

The war on testing is worth watching because a great deal is at stake, both in terms of what the war is about and of how it is being fought, but Mr. Fiske is not a war correspondent who defines his responsibility as one of uncovering and reporting the facts. For him it seems a matter of choosing ideologies and, according to the one that he and like-minded colleagues have espoused, the testing industry represents big business, and is thus an obvious and auto-

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matic villain, hostile to the equally obvious interests of the "victimized" groups the anti-testing coalition claims to represent: students, teachers, consumers in general and poor and minority ones in particular; in short, "the people" as against "the special interests."

Edward Fiske is also worth watching because, though not typical of the press as a whole—contrast, for example, the generally accurate and unbiased coverage of the testing controversy provided by both of Washington's two major papers, *The Post* and *The Star*—he is typical of a significant segment of it. That segment matters because it has its counterpart in academia and in most professional groups in and out of government, as well as in that segment of the youth culture of the 1960's and 70's that has survived into the 1980's. These loosely associated but strategically placed individuals act as collective drum beaters for the organized anti-testing coalition—cheering it on as it strides toward the total victory it seeks, insisting that such a victory would represent a triumph for "the people" against the arbitrary elitism of another undemocratic pillar of the greedy, racist American establishment, the testing industry.

David vs. Gallup

Stripped of its biblical cloak, David's coalition turns out to consist of three main groups: the National Education Association, the National Association for the Advancement of Colored People, and the Nader conglomerate. Let us begin by taking a closer look at these organizations and their claims.

The 1.8-million-member NEA is the largest teachers' organization in the United States, and its leaders launched the war on testing by calling for a nationwide moratorium on all standardized testing and by mounting a massive public relations campaign to arouse popular hostility to it. This initial, non-legal strategy was adopted in 1972 and it is now clear that it was a total failure. The American public responded with the minimum-competence-testing movement —a demand for more, not less, objective test data—that spread across the land with the speed of a prairie fire.

At the start of the last decade, only one state, Colorado, had a minimum-competence-testing program in its public schools—in essence, a literacy requirement for high school graduation. At the decade's close, 38 states—enough to ratify an amendment to the Constitution of the United States—had adopted such programs, and most of the remaining ones had proposals for similar action under study. All this, despite the fact that the minimum-competence-test-

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ing movement was a populist's dream: a purely local, grass-roots effort with no national lobbying organization of any sort, let alone a practiced, professional one.

Public-opinion-poll data leave little room for doubt about why the movement succeeded. Discontent with achievement levels in the public schools was high and rising throughout the decade and has not yet leveled off. Black Americans were and are even more dissatisfied than white ones, and large majorities in both races have repeatedly expressed strong approval for the value of objective, standardized tests, in schools and elsewhere. In its most recent 1979 survey, the Gallup organization once again asked a representative sample of Americans what they thought of standardized tests. Eighty-one percent thought they were "very useful" or "somewhat useful," while only 17 percent rated the tests as "not too useful"—an approval ratio of nearly five-to-one, which rose to six-to-one when the views of non-whites alone were tabulated. Clearly, the NEA does not represent "the people," unless that term is somehow redefined so as to exclude most American citizens and parents from its usually generous populist embrace.

By contrast, the NEA's claim to represent the views of American educators does not appear to be made up out of whole cloth, but available evidence suggests that it is, at the very least, exaggerated. First and most obviously, there is the fact that the nation's second-largest teacher's organization, the half-million-member American Federation of Teachers, has taken a very different and very much more positive view of standardized testing in general and of minimum-competence testing in particular. Its president, Albert Shanker, has spoken out repeatedly with force and eloquence for objective standards of competence and against pending national anti-testing legislation similar to the LaValle bill enacted into law in New York State in 1979. Of course, not all AFT members agree with their leaders, any more than all NEA members do with theirs. From the limited objective data currently available, however, it seems that most teachers and school administrators—irrespective of their organizational affiliations—hold views on testing and a number of other key issues that are more similar to those of Mr. Shanker and his colleagues than they are to those of the central-office staff of the NEA.

In recent years, the NEA has offered only polemics about teachers' views on testing, and has insisted, among other things, that teachers are being forced to teach "to" the tests with resultant gross distortions in the content of instructional programs. However, in

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the December 1962 issue of their own *Research Bulletin,* they provided some actual survey data. Asked whether nationwide testing programs such as merit scholarship exams and college entrance exams were exerting an influence on the instructional programs in their schools, 41 percent answered "yes, and the influence is desirable." Only 5.4 percent said "yes, and the influence is undesirable." Of the remainder, 32 percent could detect no influence at all, and 21.3 percent were undecided.

Leaders of the National School Boards Association have also rallied behind the anti-testing coalition, but data on the opinions of a sample of 1,022 Association members who attended the 1976 NSBA annual convention showed that only 14 percent agreed with this statement: "It would be wise to eliminate standardized testing." In contrast, 69 percent agreed with this one: "Teacher groups [e.g., NEA] who call for the elimination of standardized testing are only trying to avoid being held accountable."

Representative or not, the NEA has enormous power because its political and economic resources are awesome. It has a grateful friend in the White House and is working hard to keep him there; it has a host of friends in Congress and in the swollen federal education bureaucracy it helped to create and maintain and, more recently, to elevate into a cabinet-level department despite the strenuous objections of the AFT and other groups concerned about increasing federal control over education and its evaluation. And, it has substantial wealth: The budget for its national organization in 1979-80 was $62,704,590—a figure that excludes additional funds held by its nationwide network of state affiliates. To ignore the NEA's central role in the war on testing, a war that it initiated and maintains with fierce commitment, is to ignore an irrefutable fact that has been a matter of public record for almost a decade.

The NEA's oldest ally in this war is the NAACP, an organization with a much smaller membership base but with an even more impressive roster of powerful friends, in the White House, on the Hill, and throughout the federal bureaucracy—most especially in those agencies it played a key role in creating, directing, and staffing, such as the Equal Employment Opportunity Commission. In addition, it has one of the most sophisticated legal departments in the country, and more friends on the federal bench than any other organization (including the American Bar Association). And its pronouncements on all subjects, testing included, are routinely treated with great respect, not only in the pages of *The Times,* but in those of virtually every other newspaper in the country. The reasons for

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this are not hard to understand: Founded in 1909, the NAACP has a long and honorable history; its members were in the forefront of the century-long struggle for equal rights for all Americans and it is widely regarded as the conscience of the country and the voice of black America.

Nonetheless, the NAACP's claims to representative leadership can be dealt with more quickly and more decisively than those of the NEA, since the evidence here is abundant, clear, and compelling. In the 1950's and the early 1960's, when the NAACP opposed state-imposed segregation and differential treatment of equally competent individuals on the basis of race, its claims were true: The NAACP reflected the views of virtually all black Americans and, from 1950 on, of increasingly large majorities of white ones. In the late 1960's and the 1970's when the NAACP began to champion court-imposed ratio integration and representation for some groups but not for others, and to oppose differential academic and vocational treatment of competent and incompetent individuals on the basis of tests or anything else, they ceased being representative, not only of most white Americans but of most black ones as well.

The NAACP suffered a steady decline in membership and revenues throughout most of the last decade. By 1977 when Benjamin L. Hooks succeeded Roy Wilkins as executive director, membership had fallen from its peak of 534,710 in 1963 to less than 400,000, and the organization was a million dollars in debt. Nonetheless, the NAACP continued to insist that it spoke for all blacks—even in cities like Detroit, Atlanta, and San Francisco where its own locals opposed its actions—and its national power and influence remain formidable. Challenges to its claim to speak for black America have received little publicity. Publicized or not, all of the available data suggest that black Americans reject the NAACP's insistance that valid tests are racist, just as they reject a host of other NAACP positions, as detailed in an excellent article by Louis Henri Bolce III and Susan H. Gray in the Winter 1979 issue of *The Public Interest.*

What is true for blacks seems to be true for student consumers of testing as well, although the evidence on students' views, like that on teachers' views, is less extensive than that on the views of Americans in general, black and white. Ralph Nader and his nationwide network of Public Interest Research Group lobbyists claim to represent students, but on the basis of available data this claim too must be rejected as false. More specifically, Nader insists that the tests are unfair, that they have an excessive influence on col-

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lege admissions decisions, that they blight students' lives, and that advance information about what sorts of test questions to expect is grossly inadequate.

Results from a survey of some 3,000 students conducted in 1977 by the Response Analysis Corporation for the College Board indicate that, although only 30 percent of the students expected to do well on the Scholastic Aptitude Test, 79 percent believed that SAT scores should have "a great deal" or "a fair amount" of influence on the decisions of college admissions officers. Students who regarded the elimination of the SAT as a poor idea outnumbered students who thought it a good idea by a margin of about two-to-one. The most frequently chosen reason for retaining the exam was its perceived fairness and objectivity. Large majorities rated both sections of the test as either "very fair" or "pretty fair" (81 percent felt that way about the math section and 73 percent about the verbal section).

Prior to taking the test, more than half of the students reported only mild anxiety about it, approximately a quarter reported none, and only about a fifth described themselves as very anxious. Afterwards, less than a quarter reported doing better than they had expected to do and approximately a third reported doing worse, but only 13 percent said they had set their sights any lower as a result of their test scores. Sixty-two percent said they had no strong feelings about the SAT experience; the rest were about evenly divided between those who enjoyed it and those who disliked it.

Most students did not begin preparing for the test more than a few weeks in advance, did not answer all of the sample test questions available to them, and did not feel that preparation helped much. However, because some students did indicate a desire for more information in general and more sample questions in particular, the College Board developed a new, longer, and more detailed test booklet containing a full-length sample test, along with the correct answers to each question.

In 1978, the College Board explored student reactions to the new booklet, using a sample of some 2,000 high-school juniors. These students generally rated the new booklet as more helpful than the old one and believed that taking the sample test was "very good" or "pretty good" preparation for the exam. Nonetheless, only 38 percent reported reading the entire booklet and only 36 percent claimed to have tried to answer all of the sample questions; 23 percent answered none of them. Twenty-nine percent of the students who received the new booklet also felt that it helped them to get

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higher scores; only 14 percent of those receiving the old booklet felt that way, but data analysis revealed no differential effects on actual scores.

All in all, it seems fair to conclude that "David," in Mr. Fiske's "biblical scenario," is a giant, and a grossly unrepresentative one —unless representation is somehow defined to encompass a process which involves the bullying of a majority of all citizens by an arrogant minority.

David vs. Goliath

Important in their own right and crucial to the future of American democracy, questions about representative leadership are, of course, irrelevant to a fair appraisal of the purely intellectual merits of the arguments against testing. So, too, is the tendency to equate business success with sin that is endemic to the anti-testing coalition and its allies. To place the issues in context, however, it seems useful to begin by spelling out the basic social and economic facts about the testing industry and its development.

The testing industry hardly competes with the American auto industry—a $100-billion-plus business—or with huge federal bureaucracies like the new, cabinet-level Department of Education, with its projected $15.5 billion initial budget. But it's no mom-and-pop store either. Moreover, the Naderite claims notwithstanding, testing is hardly virgin territory for Uncle Sam.

The U.S. Government is, in fact, one of the largest producers of tests in the country. Acting through the Civil Service Commission and the Departments of Labor and Defense, the federal government produces its own tests for a wide variety of jobs and training programs and administers them to approximately 4.5 million persons annually. Significant government activity in this field dates back to 1883 when the Civil Service Commission began administering competitive exams on a regular basis as part of its continuing effort to replace patronage with merit selection. However, it was the military that pioneered in the development of large-scale, multiple-choice testing in response to the need in 1917 to screen, train, and place a million-and-a-half raw recruits for World War I.

Government activity aside, the testing business is divided between private, for-profit enterprises and nonprofit corporations. Substantial market shares are held by each sector. Most of the major profit-making firms are owned by publishing houses that derive

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the bulk of their income from textbook sales, notably Harcourt Brace Jovanovich, Houghton Mifflin, and CTB/McGraw-Hill. A few are owned by larger corporations like Xerox, Westinghouse, and IBM—the company that developed the first automatic test-scoring machine in 1935, made obsolete in the 1950's by the development of high-speed optical scanning equipment. The new equipment increased the economic viability of large-scale testing operations, and encouraged the entry into the field of more sophisticated business people and the investment capital they brought with them.

However, because ordinarily the profit-oriented conglomerates do not publish separate financial figures for their testing operations, it is impossible to tell exactly how much money is involved. Harcourt is an exception here: Published figures show 1979 revenues of $456.2 million, with revenues from tests and testing services accounting for approximately 6 percent of that total. Generally, though, precise data on revenues derived from testing alone are publicly available only for the nonprofits that have no business other than testing. (Since the nonprofit share alone is worth well over $100 million, however, the Nader-Fiske estimate of a $150-million industry total looks like a gross underestimate.)

Educational Testing Service, a $94-million corporation, is the largest of the nonprofits and the oldest. It was created by the College Entrance Examination Board, the American Council on Education, and the Carnegie Foundation in 1946 to take over, among other activities, CEEB's old role in the development and administration of the Scholastic Aptitude Test. The SAT is the college entrance exam currently taken by some 1.5 million of the nation's prospective college freshmen. Many others take tests developed by American College Testing, an Iowa-based nonprofit corporation which dominates the market in the Midwest, a big market in terms of national, but not of international, testing.

Some 6 million students took the National College Entrance Examination in the People's Republic of China in July 1978, but only those who scored in the top 5 percent or so, about 290,000 persons in all, were selected for admission to college that fall. In this country, too, colleges were once selective and committed to excellence, but unlike the Chinese, who have had an elaborate, formal, national-examination system dating from 1115 B.C., our colleges had no non-parochial way of measuring excellence.

Establishing a non-parochial measure of excellence is what an association of Eastern colleges, forerunner to the College Board, was created to do at the turn of the century, at the instigation of

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the ubiquitous Nicholas Murray Butler. The eventual result of its efforts was the SAT, a national exam first introduced in 1926. The SAT is not tied to the content of any local curriculum, or to any specific content domain at all: It is a test of verbal and mathematical reasoning ability, no more and no less. As such, it opened the way to large numbers of poor youngsters from all the heterogeneous cultural provinces of the land, and it did so without lowering college admissions standards. Indeed, it probably served to raise them from the start, but there is no way to be certain prior to the introduction of the constant standard provided by the SAT.

The SAT, like other standardized tests, achieves constancy through a process known as equating. Equating, in its simplest form, involves including samples of previously used questions on each new edition of a test to make sure that the new questions are no easier and no harder than the old ones. This procedure insures the fairness of successive versions of an exam for individual test takers and, when it has been faithfully executed over long time-spans, as is the case with the SAT, it does something more. It provides us with a vital and unique set of social facts—because it allows us to measure intellectual progress, stability, or retrogression over time in successive youth cohorts or in any population group whose performance is periodically sampled and judged against the constant standard provided by this or any other good standardized test.

The two most vital social facts about the intellectual performance of prospective American college students revealed by this process are these: First, there was a long period of relative stability extending back at least as far as 1951, during which mean scores fluctuated from year to year within a narrow range that extended from 471 to 479 on the verbal section of the test and from 490 to 501 on the mathematical section. Second, beginning in 1963-64, mean scores on both sections of the test began to decline and continued to do so throughout the rest of that decade and all of the next one. Overall, the decline is substantial and significant, and there is as yet no solid evidence that it has been arrested or reversed. Data for 1978-79, the latest year for which complete figures are currently available, show a mean verbal score of 427 and a mean mathematics score of 467.

Attempts to view the decline in Panglossian terms as nothing but a reflection of the increased access to higher education now enjoyed by poor people, women, and minorities do not hold up well under scrutiny. Expansion and change in the composition of

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the test-taking population can account for some but not all of the decline in the 1960's. However, there was relatively little change in that population from 1970 to the present, and the score decline during that period was even greater than that which preceded it. And, the decline was manifest in all groups within that population, not just the newer ones. Most tellingly, the absolute number of high-scoring students showed a progressive drop over this period.

Questioning the competence and/or integrity of the data source will not help either: Data derived from the major competing tests in this area, the ACT tests taken by just under a million American college applicants a year, display the same distressing pattern. So do a host of other relevant indicators detailed in the 1977 report on the score decline issued by the independent advisory panel appointed to investigate it. The inescapable conclusion is that the pool of young people currently seeking entrance to college is markedly less well prepared to do college work than were their counterparts in the 1950's and early 1960's.

Selection factors are not likely to affect the declining level of intellectual competence of American college students in any significant way in the foreseeable future. During the 1960's, American colleges and universities expanded as if the post-War baby boom that produced the massive youth cohorts of that period would last forever. It did not, and institutions of higher learning are now confronted by sharply declining enrollments in a period of economic hardship and insecurity. Faced with this potentially devastating situation, most undergraduate institutions, including some of the most selective, have lowered their admissions standards and many have abandoned them altogether.

A 1978-79 College Board survey of 2,600 colleges showed that only 40 percent required any minimum grade point average for admission; only 30 percent set minimum cut-off scores on the SAT. As a result, percentages of applicants accepted were very high: 91 percent at public two-year colleges, 86 percent at private two-year colleges, 79 percent at public four-year colleges, and 77 percent at private four-year colleges. And, in interpreting these data, it should be noted that the SAT is used mainly by the more selective schools. Less selective ones generally use the ACT or eschew admissions testing altogether.

The inevitable overall result is that virtually all literate and numerate students and many semi-literate or even illiterate ones can find some college which will accept them, if they can somehow arrange to pay the fees. Most are accepted by the school of their

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first choice; others, especially those who combine undistinguished high school grades and low test scores with a preference for the more selective schools, have to settle for their second or third choices. Where barriers exist, they usually reflect inadequate funds, not inadequate skills and scores.

The increasingly tight money situation notwithstanding, roughly 50 percent of all American high school graduates now go on to college, an extraordinarily high percentage, not merely in comparison with relatively poor countries like China but also in comparison with any and all Western European nations, even those with per-capita incomes that surpass our own by substantial amounts. And American young people from families earning less than the national median income are now almost as likely to attend college as those from families earning more.

With or without the benefits of a college education, illiterate and semi-literate young people pose a serious problem for American society and for its troubled economy. Test data on this problem and its development over time are much less adequate because no single test of functional literacy has been consistently applied to successive youth cohorts or to any other group of Americans. As a result, it is not possible to reach any firm conclusions about decade-to-decade trends or changes, but available data are adequate to provide a basis for at least a minimum estimate of the present extent of the problem.

For this purpose, the best available data are probably those supplied by the newest of the nonprofit testing organizations, the National Assessment of Educational Progress. NAEP is a latter-day hybrid type of organization, and Nader and his anti-testing raiders will be reassured to learn that NAEP is free from any taint of business success in the usual capitalist sense. It does not need to sell its wares to sustain itself; it is supported by a combination of government and foundation money and, although it claims that it is not a testing organization at all, the only readily discernible difference between its products and those of other testing companies is the unusually high cost of the data it produces.

Questions of category and cost aside, NAEP's researchers are generally competent people and their test of functional literacy is a reasonable one, focused on practical everyday problems which require some minimal reading ability for their solution. Applying this test to a large, representative sample of American 17-year-olds still enrolled in high school in 1975, they found that 12.6 percent of their total sample and 41.6 percent of their black sample were grossly illiterate.

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Using a slightly less stark criterion, it was found that 44.4 percent of the total sample of 17-year-olds and 82.7 percent of the black sample fell into an in-between category they declined to name, one which I have elsewhere referred to as semi-literacy.

Of course, these dismal figures grossly underestimate the extent of the literacy problem among American teenagers today, because students who dropped out of school prior to age 17—approximately a quarter of all students—were excluded from the sample. Dropouts have, however, been a focus of intense concern for decades and, as a consequence, there is a wealth of data showing that their intellectual skills are significantly poorer than those of students who remain in school.

Cross-cultural data, which often help to put seemingly overwhelming problems in perspective, provide few consolation prizes in the matter of illiteracy—even if we avoid comparisons to Western European nations and focus mainly on less developed countries such as Cuba. The Cubans have been engaged in a campaign against illiteracy for some time now and, although their assessment criteria are not entirely clear, their estimate of a 5 percent current illiteracy rate is probably not entirely off the mark.

Attempts to view the illiteracy problem solely in academic terms —by ignoring or denying its economic and political ramifications— do not work out too well either, especially in a developed society such as our own. In such a society, most jobs are, of necessity, skilled jobs—and where this is the case a growing mass of data indicates that poor students frequently make poor workers. Two bodies of evidence are among the most interesting on this point: that developed by Frank Schmidt and his colleagues, at the Civil Service Commission and elsewhere, on the relationship between test scores and economic productivity, and the unhappy experience of the military with the low-scoring recruits currently estimated to constitute some 45 percent of the all-volunteer Army.

A copy of the unreleased 12-volume Army Training Study, obtained by *The Washington Star,* reportedly concludes that crews manning tanks and air-defense systems are unable to remember or retain knowledge learned in basic training once they reach the field, a potentially disastrous situation, and that "the only demographic variable significantly related to retention was mental category [as assessed by the army's own tests]." Faced with these facts, one can only pray that Americans will not refuse to grasp the lesson inherent in them unless and until it is written in blood.

Wars, economic disasters, and other horrors aside, the evidence

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summarized above indicates that, in intellectual terms, American society has not done well by its youth for almost two decades now. If that were a trade-off for some other good, some of us would regard it as worth it and some of us would not. In fact, however, neither side can make a deal here, at least, not on the basis of data. Evidence collected and summarized by Edward Wynne, among others, shows that lax educational standards have produced no compensating rise in happiness, altruism, creativity, or any other generally valued trait or ability. The increases—large and frightening ones—have been in crime, addiction, venereal disease, illegitimacy, and suicide rates, and in measures of self-centeredness, grandiosity, and narcissism. All in all, the factual picture is one of increased incompetence and irresponsibility, of excessive expectations, inadequate efforts to realize them, and indiscriminate externalization of blame for resultant failures, in school and on the job.

Nonsense, say the anti-testing people: There is nothing wrong with young people today or with contemporary methods of socializing them. The only real problem is with the tests that say something is wrong with them. Get rid of the tests and the problems they point to will cease to exist. Standardized tests, they charge, are worthless and destructive, and their claims to measure achievement and predict success are, in the words of Ralph Nader, "false and unsubstantiated" and "a specialized kind of consumer fraud."

Terry Herndon, executive director of the NEA, uses even harsher language, describing standardized tests as "similar to narcotics," and comparing ETS to "armaments manufacturers who say guns don't kill, people do." And here, to fill out the record, is an example of an echo from that segment of academe that has allied itself with the anti-testing coalition, courtesy of Professor Jerrold R. Zacharias, member in good standing of the National Academy of Sciences: "I feel emotionally toward the testing industry as I would toward any other merchants of death. I feel that way because of what they do to the kids. I'm not saying they murder every child —only 20 percent of them."

Charges vs. evidence

Stripped of extremist rhetoric, there are three basic charges against standardized tests: that they don't measure everything that matters; that they don't predict success in school or in later life with anything like perfect accuracy; and that they are biased against minorities and poor people. Evidence relevant to each of

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these charges is massive and overwhelming; it has been systematically collected for over 50 years by the testing companies themselves and by thousands of independent researchers from all over the world who have nothing to do with the production and dissemination of standardized tests in this country or any other. They focus on tests because they are good research instruments and because data derived from them are relevant to scholars and scientists in a wide variety of fields for a wide variety of reasons. And, contrary to the lurid secrecy accusations by the anti-testing coalition, these studies are readily available to anyone who wants them.

Most of these studies, including most of those authored by professionals who work for testing companies, are published in independently refereed professional journals. Unpublished studies are such either because they have been deemed to be too flawed and inadequate to meet minimum scholarly and scientific standards or because they deal with questions journal editors consider too parochial to interest any audience other than a local, in-house group. Interesting or not, most such studies are also readily obtainable by writing to the authors and/or the institutions they work for. Many can also be obtained through the Educational Resources and Information Clearinghouse in Measurement and Evaluation, a centralized microfilm library and report-reproduction service operated by ETS for anyone who wants to use it, without exceptions or restrictions.

Many of these studies are quite technical and the sheer bulk of them can be overwhelming—but competent, objective summaries and critiques of their major methods, findings, and implications can be found in any good textbook on psychological testing. The most widely used and universally respected of these is a book with the unsurprising title *Psychological Testing*. Written by Anne Anastasi, a professor of psychology at Fordham University for over 30 years, and published by Macmillan (a company that does not produce or sell standardized tests), it is now in its fourth edition and is scheduled to appear in its fifth in 1981.

For present purposes, overall research findings are readily summarized: They show that the first two charges listed above are true but irrelevant and that the third one is false and has been disproven by solid, empirical data over and over again. Of course tests, like all things human, are imperfect. They do not and cannot measure or predict anything with perfect accuracy, let alone everything, and no major test producer or researcher claims otherwise. So what? The choice before us is not between assessment

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methods available in utopia and those available in reality. The choice is among methods available in reality, and comparative studies show that valid tests measure a number of extremely important abilities more quickly and more accurately than anything else does. That is why predictions made with them are almost always better than predictions made without them, and that is as true for predictions about black students and workers as it is for predictions about white and Oriental ones.

Oriental students, by the way, score higher than black or white ones on most tests in common use, but to conclude that standardized tests are biased for Orientals and against whites makes about as much sense as concluding that they are biased for whites and against blacks. The only sensible conclusion is that American society, as reflected by its major tests, is biased in favor of people with verbal and mathematical skills because we need people with high levels of those skills to keep our society running—a need we share with every other developed society on this earth, East, West, or in-between.

Standardized tests are particularly good at giving us objective data about verbal and mathematical abilities. Objective data about how well or how poorly these abilities have been developed in particular persons at particular points in time enable us to improve the accuracy of our predictions about how those individuals are likely to perform in school or on the job. There is no real mystery about how and why they do this. Good tests of verbal and mathematical abilities help predict school performance because they are, in effect, work samples. They predict job performance for the same essential reason.

The opposition's counterarguments, quibbles, and debating points are, of course, potentially endless, but it is not necessary to spend much time on them, since all are variations on the three main charges. A few examples, however, may prove helpful. The commonest variation on the tests-don't-measure-everything-that-counts theme is this: Verbal and mathematical abilities are not as important in the "real world," and especially in the blue-collar world, as qualities such as character and creativity, and standardized tests measure neither; hence, they could not possibly improve the accuracy of our predictions, even though data repeatedly show that they do.

Certainly character and creativity matter. The fallacy is in thinking that such traits can function as substitutes for—rather than as needed supplements to—reasonable, task-adequate levels of verbal

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and mathematical skills. In fact, situations in which substitution is possible are quite rare. Patient, honest, creative carpenters, computer programmers, and chemists are no doubt better at their jobs than colleagues who lack those traits—but people who cannot deal with numbers with some facility cannot perform any of those tasks with competence. The fact that tests don't measure everything doesn't mean that the things they do measure can be blithely dismissed.

In actuality, there are very few educational or vocational situations in which that is feasible, and the meaningful distinction is not between white-collar jobs and blue; it is between skilled jobs and unskilled ones. Almost all skilled jobs in modern society, manual or non-manual, require quite high levels of verbal or mathematical ability or both. People who think otherwise do so on the basis of snobbery and ignorance about blue-collar work, not data.

Character and motivation cannot substitute for developed abilities but the reverse is also true, and goes a long way toward explaining why even the best tests are imperfect predictors of performance and always will be. Ability tests tell us what people can do and, although most people do what they can as well as they can most of the time, there will always be some people who don't, for a variety of reasons, characterological or situational.

Ability alone goes nowhere. To succeed, you need ability plus effort, for starters, and we have no real test for effort. Our closest current approximation to it seems to be grade-point average and that, I believe, is why predictions generally improve when they are based on a combination of test scores and GPA's as they usually are in academic-selection situations.

However, even if that were not true—even, that is, if ability and effort always operated in tandem—it would still be futile to expect any assessment device, test or non-test, to predict career success, let alone life success, with anything like perfect accuracy. A perfect correlation between merit and its reward could only be expected in a perfect society, and while I personally believe that our system is much better than its most strident critics claim, it is obviously not perfect and not likely to become so, ever. We may be doing a decent job of reducing the more obvious forms of bigotry, but factors like nepotism, ill health, and plain bad luck will continue to reduce correlations between measures of merit and external rewards for it, now and in the foreseeable future. All that we can reasonably expect of ourselves and others is that we use the best assessment measures we have and struggle to deal with the information they

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give us with as much honesty, intelligence, and compassion as we can muster.

What then of the recently issued *Nader Report* on testing, with its 554 pages, its 400 footnotes, and $30 price tag? Judged against the evidence and standards presented above, it is a disheartening failure, and readers who want to judge for themselves can do so at a bargain price by obtaining a copy of the March 1980 *Reader's Digest*. Nader and a succession of young collaborators have been investigating standardized tests and the companies that produce them for the past eight years. Their long-awaited final report, written by Alan Nairn, who also co-authored the *Reader's Digest* article, focuses on only one testing company, the Educational Testing Service, exaggerating its role in the testing industry out of all proportion, and distorting the data on tests and their effects to an extreme degree.

A few of the most egregious distortions merit special attention. The *Report* claims: 1) that tests predict college grades no better than "a roll of the dice in 88 percent of the cases"; 2) that combining SAT scores with high school GPA's improves the accuracy of prediction by only "five percent of nothing"; and 3) that test scores correlate with family income, while previous school grades do not. All of these claims are untrue.

Consider the following facts: The *Report* claims that the average correlation between SAT scores and college grades is .345—a figure its authors derive by averaging two separate correlations, those of the verbal section of the test with college grades, and those of the mathematical section of the test with college grades. This is an indefensible procedure since the true correlation of the two measures with grades is at least as high as the higher of those two figures. If it were not, it would mean that one score not only made no independent contribution to the predictive validity of the test but actually detracted from it. No technical sophistication is required to grasp the basic point here. All competent researchers and many adolescent test takers understand that while many people do equally well on both parts of the test, others do significantly better on one part than on another and that, in the latter case, it would make no sense to discount automatically the predictive power of the higher score on the basis of the lower one by averaging the separate correlations together.

Nader, Nairn, and associates then proceed to square their fallacious average correlation ($r = .345$) to produce an r^2 of .1190 which, subtracted from the statistical representation of perfect pre-

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diction (1.00) produces the 88 percent figure the authors cite.[1] This procedure, too, is considered indefensible for these purposes by competent statisticians. Competent statisticians do, sometimes, square the correlation coefficient but they do so to assess the percent of explained variance and not to assess predictive variance which is the issue here. The literature on this point is obviously quite technical and not known to most students or professionals unless they are specialists in the field, and it would be reassuring to attribute this error to simple ignorance. Unfortunately, footnote 15 on pages 419-420 of the *Report* makes this difficult, because it indicates that the authors are familiar with the appropriate sources here.

Adding insult to injury, the writers proceed to judge the validity of the SAT by presenting data only on its ability to predict the grades of students admitted to selective colleges, ignoring all of the data relating scores to grades at nonselective institutions. As all psychometricians and most competent researchers in any field know, the correlations will always be lower in the first case than in the second, and the magnitude of the decline will be a function of the degree of restriction of range involved. In nontechnical terms, it is always easier to make accurate predictions about people who exhibit large differences on relevant characteristics than it is to do so for people whose differences on those same characteristics are slight.

The *Report's* "5 percent of nothing" figure is equally misleading for at least two compelling reasons. First, it is blatantly contradictory to tout past grades over test scores as a basis for admissions decisions and then to turn around and dismiss later grades as meaningless when test scores are successful in predicting them. Second, it is a plain fact that accuracy of prediction is significantly better when predictions are based on a combination of previous grades and current test scores than when they are based on grades alone: That is why schools that can still afford to be selective generally prefer to use both and not to rely on grades alone, especially in light of the grade inflation rampant in recent years.

On the relationship between test scores, school grades, and income, Nader and company are once again simply wrong. It is, of course, true that there is some correlation between family income

[1] In appearances on talk shows and in interviews with the media, Nader himself has repeatedly inflated this already inflated figure to 90 percent. The source of the additional two points is a mystery: I could find no basis of any sort for them in the *Report* itself or in any other source.

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and student test scores but it is untrue to say that there is none between family income and student grades. The truth is that both grades and test scores show moderate correlations with family income, ranging from about .20 to .35. However, it is grossly inaccurate to claim that poor or minority students have little or no chance for social mobility and occupational success as a result. Students from every income level, including the lowest, obtain the full range of scores on the SAT and on a host of other standardized tests. Students from the wealthiest and/or best-educated families do get better school grades and test scores than other students on average, but they, too, exhibit the full range of possible scores on both measures.

Selectivity vs. hyperselectivity

One last form of unusual selectivity in the *Nader Report* is worthy of mention here, both because it pertains to my own previous work and because it is typical of the *Report's* use of much of the literature on testing and related problems. There are six references to my work in the text of the *Report,* all referring to a single article of mine, "External Screening and Equal Protection: Davis, DeFunis and Bakke," [2] and all make it seem as if my analysis of the worth of test scores in selection systems is or was congruent with that of the Naderites. In fact, it is not and never was. The Naderites argue against all uses of standardized test scores in all selection situations; what I argued against was an excessive reliance on test scores for hairsplitting distinctions between high-scoring individuals in hyperselectivity situations—a very different matter.

Hyperselectivity situations are those which arise when the number of qualified applicants greatly exceeds the number of openings available to them in a particular institution, or group of institutions, at a particular time and place. That was the situation faced by American law schools, in company with a number of other graduate and professional schools that became extremely, perhaps unreasonably, popular with students in the 1960's and 1970's. Throughout those decades, while average SAT and ACT scores were declining, average LSAT scores were rising to levels well beyond anything recorded in the past. As I pointed out in the article cited, the LSAT, like other good standardized tests, was and is very useful

[2] Published in *Educational Measurement and the Law,* Proceedings of the 1977 ETS Invitational Conference on Testing (1978).

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in discriminating between qualified and unqualified applicants—that is, between those whose scores place them within a range in which the best prediction is that all will succeed and those whose scores place them within a range in which the best prediction is that few or none will succeed. As a result, the LSAT helped law schools to maintain high standards and at the same time to achieve dramatic reductions in flunk-out and drop-out rates, with beneficial results for all concerned.

Alas, most American law schools did not stop there but responded to what was for them a booming sellers' market, by requiring ever higher test scores and grade point averages, making finer and finer distinctions between individuals at the very top of the academic achievement range. The trouble with this approach is that differences between students within the highest scoring range are much less reliable and valid than differences between students within it and those outside it. And the policy implications of this approach in this situation were quite negative, serving, among other things, to exaggerate trivial differences between high-scoring applicants of different races, creating an artificial need for an invidious double standard based on race, and making many fully qualified students of both races feel inadequate and unqualified.

At the same time, as a result of the buyers' market in undergraduate education, many grossly inadequate students of both races were being graduated from high school and admitted to college, told, in effect, that their intellectual preparation was adequate when, in fact, it was not. Thus, many institutions of higher learning ended up in the anomalous position of wringing their hands in public over the nonexistent intellectual deficits of black students with LSAT scores above 600, while simultaneously closing their eyes to the genuinely inadequate preparation of students, black and white, with SAT scores below 400. In both situations the wisest course, in my view, involved a rejection of purely relative standards and the resultant extremes of hyperselectivity and/or nonselectivity, and an across-the-board return to reasonable, fixed standards tied to the levels of intellectual competence necessary for the mastery of appropriate curriculum materials. That is why I argued against the use of the LSAT to make dubious distinctions between individuals within ranges where test scores discriminate least. For the same reason, I have argued elsewhere against the refusal to use test scores to make meaningful distinctions between individuals in different ranges where test scores discriminate best.

This is hardly an argument against any use of the LSAT in law

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school selection, let alone an argument against the use of standardized tests in selection situations generally. And it is most emphatically not an argument for the "new" substitute criteria that the Naderites and their friends are pushing: subjective appraisals, inevitably political, of the worth of candidates' extracurricular activities and attitudes—criteria that are already in use throughout much of Eastern Europe and in totalitarian states elsewhere. Here, in fairness to colleagues from abroad, it should be pointed out that successful totalitarian states tend to use political criteria in addition to—not instead of—the sorts of objective intellectual measures the Naderites are trying to eliminate from the American scene.

In fairness to colleagues at home, it should also be noted that many highly competent psychometricians disagree with my views on the need to establish a ceiling as well as a floor in external screening situations. As best I understand their arguments, they do so for two main reasons: because in a formal—albeit not necessarily in a practical—sense, the best statistical prediction about any two individuals with different test scores, however miniscule the difference, is that the one with the higher score will perform better; and because any deviation from a pure rank-order, highest-scorer-wins selection strategy usually involves intellectual value judgments that psychometricians are reluctant to make.

The usual way of making such judgments is to use cut-off scores to divide qualified candidates from unqualified ones but, since "qualified" generally means something like "capable of mastering the appropriate material at the desired level," it is necessary to define both the level of mastery to be required and the types of material to be deemed essential. Such judgments can rarely be made on a purely objective basis; usually, they require moving beyond immediate statistical and empirical considerations to ideals at some point, and there is simply no totally value-free way of doing that.

In other words, bottom-line questions in this area have to do with two very basic issues: where the lines should be drawn and who has the right to decide. Accusations about conspiratorial psychometric gate-keepers notwithstanding, most test developers want no part of the responsibility for doing this. That is why they are usually willing to rank individuals on characteristics they feel competent to measure, but are often unwilling to recommend even the general use of cut-off scores, let alone to recommend specific cut-offs in specific situations. And although I personally favor a less diffident approach, even for test developers, there is obviously some

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merit to their insistence that each institution be allowed to set its own standards.

Decisions about standards and their ideal height should not, after all, be routinely imposed upon members of one profession by members of another. For that reason, cases involving such decisions do not belong in the courts either, but they are being brought there with increasing frequency and, unfortunately, contemporary courts rarely display any diffidence at all about deciding them. Courts do, of course, have a right and a duty to impose a floor on standards in certain areas mandated by the Constitution—for example, to enforce minimum acceptable standards for due process in cases where it applies—but they have no right to assert their own policy preferences by imposing general ceilings or by insisting that floors be lowered in any wholesale way.

These are not legal decisions; they are moral and intellectual ones and, in a democracy, individuals, groups, and institutions are supposed to be given as much freedom as possible to make their own. Courts are, in fact, charged with the *Marbury v. Madison* responsibility to monitor legislative interference in this area, to ensure that no branch of government oversteps constitutional limits on the rights of free citizens and their institutions. Alas, many federal judges have instead become partisans in the debate themselves, not because they share the anti-business stance of the Naderites or the blame-the-tests-not-the-teachers stance of the NEA, but because they have their own reasons for finding the truth unpleasant and rejecting it. Beginning in about 1968, the federal courts, following the lead of the Supreme Court, embraced the equal-results-now ideology that the NAACP failed to sell to the American public in the late 1960's and 1970's and, sadly, the data from objective tests frequently fail to conform to the ideology.

The result is that even though the anti-testing coalition is neither representative nor right, it has won many battles in court already, and may yet win the war on testing by judicial fiat if its current drive to destroy standardized testing through restrictive legislation should founder.

Sword of the Philistines

The anti-testing coalition may have lost the battle for genuine popular support but, at this point, they seem to have at least a fifty-fifty chance of winning the war on either of the other two battlefields on which they are currently attacking tests and the truths

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that they reveal. Battles in courtrooms have been frequent for some time now; battles in legislative halls are increasingly common and, if the anti-testing coalition wins a decisive victory in either or both of those arenas, citizen access to the vital social facts that standardized tests provide may soon be cut off.

Ironically, attempts to achieve this end through the misuse of the legislative process by special interest groups at odds with the very consumers they claim to represent are routinely misrepresented as campaigns for greater truth-in-testing. In fact, the key provisions in all these laws, from the LaValle law currently creating chaos in New York to the Weiss and Gibbons bills now pending in Congress, are massive test-item-disclosure provisions which threaten to destroy test constancy, leaving us with no fixed standard with which to judge educational progress—or continuing retrogression—over time. Blanket test-item-disclosure provisions have this effect because they undercut the key method used to maintain test constancy: equating. So-called truth-in-testing laws, by forcing test producers to disclose all or most of their test questions and answers after each test administration, make equating impossible. Once such massive disclosures are made, there is no way to guarantee the maintenance of test constancy; hence, no way to continue giving the American public access to essential truths about what is happening to its students and, as a result, to society.

Sadly, because the battle cry of those who would deprive us of these data is "down with test secrecy," some well-intentioned people have been misled into believing that existing constraints against the unwarranted disclosure of secure test items constitute some sort of conspiracy to hurt children in order to make more money. In fact, these constraints were not invented by test producers at all, although reputable test producers do abide by them. They are written into the test *Standards Manual* initially published by the American Psychological Association in 1954 and now published jointly by the APA, the American Educational Research Association, and the National Council on Measurement in Education. It is nonsensical to think that these organizations would have adopted such provisions in order to increase revenues for the small proportion of their members who are in the business of selling tests. Constraints against disclosure of test items are only reasonable, technical provisions, designed to insure test fairness and accuracy and to preserve valuable information.

The legitimate interests of test takers are not sacrificed to such necessary precautions because reputable test producers routinely

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provide potential test takers with representative samples of test questions and answers for all major, nonclinical tests, and there is no evidence suggesting that having thousands of additional questions and answers will help test takers in any meaningful way. Indeed, available data suggest that most students do not want access to enormously expanded pools of old test questions and answers. In the College Board study cited earlier, students were asked how they felt about *Taking the SAT*, the test booklet containing a full-length sample test provided by the publisher. Most students were satisfied; 63.6 percent saw the length and amount of material as "just about right." Only 15.1 percent found it too short; and a larger minority, 21.3 percent, said it was too long and already contained too much material.

Laws requiring wholesale disclosure will hurt the cause of truth and many students along with it. Massive disclosure provisions will make it extremely difficult, often impossible, for test producers to maintain test constancy and quality and will raise the price of doing so enormously, not only for test producers but for students, who pay the fees. If a few of the larger test producers should somehow manage to succeed in maintaining test constancy in spite of the odds against that, they will receive no additional profits for their efforts. There is a great need for test constancy, but there is no market for it. No one buys or sells test constancy. It is something that reputable test producers—guided by the standards of their professional and scientific organizations—have given us for free, and it would be a travesty to let misguided legislators take it away from us or impose what is, in effect, a prohibitive tax on truth.

That is, of course, what happened in New York, forcing producers of 20 of the 26 testing programs affected to withdraw their services from that state altogether, because they couldn't afford to comply with the disclosure provisions of the LaValle law. Small wonder: It is a rare test that costs less than $100,000 to develop, rather a lot to blow on a one-shot deal. The remaining six programs, all quite large ones, of course, are still struggling to remain in the new higher-stakes game, raising prices and reducing services in the process. In January 1980 one of the withdrawing parties, the American Association of Medical Colleges, sought and won an injunction against the state on the eminently reasonable grounds that its law violates their federal copyright on the Medical Colleges Admissions Test.

The resultant confusion—even before the injunction was issued

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on January 21, 1980, 20 days after the law became effective—has left New York's main institutional consumers, its colleges, universities, and professional schools, in a quandary about their admissions procedures. It has created a host of new and wholly unnecessary problems for student test takers, the consumer group whose interest the anti-testing coalition claims to represent. New York had to begin amending its hastily passed anti-testing law with the ink still wet, and the only good thing about the situation is the possibility that it will dissuade legislators elsewhere from making the same egregious mistakes.

Egregious or not, those mistakes are terribly easy for legislators to make. Public-opinion-poll data may clearly and consistently show that most Americans support reasonable standards, and want objective test data showing how many young people are currently meeting them—but the public does not usually come knocking on legislative doors. They are too busy doing other things, truth-in-testing sounds good, and most people do not yet understand that what these bills require will operate to destroy the very data they are demanding. Meanwhile, legislators are besieged by hordes of self-proclaimed public-interest lobbyists and lawyers claiming to represent the public while fighting for positions diametrically opposed to those of Americans in general and of the groups they claim to represent in particular. When these spurious claims are taken at face value by significant segments of the mass media, the effect on legislators is especially chilling, making many responsible representatives hesitant to oppose the onslaught on testing.

Even if the legislators stand firm, however, there is real danger that an increasingly activist federal judiciary, straining against the legitimate limits on the powers of non-elected officials, will accept the arguments of those who wish to eliminate tests and give them the victory representative democracy denies them. Judicial and agency decisions have already created a multi-million-dollar mess in the employment-testing arena, raising costs, lowering standards and productivity, and further handicapping our already faltering economy. The same approach is now being applied to educational testing, where it promises to have equally depressing effects. Multiple examples could be cited, though one will have to suffice here. Since I have written elsewhere and at length about the employment-testing cases and their implications,[3] it seems most useful at this

[3] See, for example, "Washington v. Davis: Quantity, Quality and Equality in Employment Testing" (*1976 Supreme Court Review*, 263-316), and "Employment Discrimination: Adverse Impact, Validity and Equality (*1979 Supreme Court Review*, 17-49).

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point to focus on a key educational-testing case, *Debra P. v. Turlington.*

Plaintiffs in *Debra P.* were students purporting to represent two main classes of citizens. The first class consisted of all present and future 12th grade students in Florida public schools who failed the functional-literacy test required for a high school diploma by that state's 1976 Educational Accountability Act. The second class was limited to all black 12th grade students in that situation. Plaintiffs charged that Florida had denied all of them due process of law as guaranteed by the Constitution of the United States by withholding regular diplomas from those who failed the test for the third time in April of 1979, some three years after the law making the literacy requirement explicit was enacted. Though most students of both races eventually passed the test—either initially or after a period of remedial instruction provided by the state—plaintiffs also claimed that the test requirement violated the equal-protection rights of black students under the Fourteenth Amendment because more black students than white ones failed the test.

Federal District Court Judge George C. Carr agreed, ordering the state to issue regular diplomas to all public school students who attended high school for four years, irrespective of whether they had learned to read, write, or do simple arithmetic. And he enjoined state officials against denying high school diplomas to other illiterate and anumerate students for at least the next four years, thereby requiring a longer period of advance notice to change high school rules than is required to alter a criminal code.

Judge Carr was not only expansive in his definition of the notice requirement of the Due Process Clause; he was inventive as well. Under our Constitution, due process is required only when the constitutionally protected rights to life, liberty, and property are threatened. As a result, Judge Carr had to make some rather remarkable rulings of law before proceeding to issue this decision, but he did not shrink from the task. He held that students have a constitutionally protected property interest, not only in high school attendance and instruction, but in diplomas attesting to satisfactory mastery of their high school curriculae—whether they have, in fact, mastered the minimum requirements of those curriculae or not. And he held that students also have a constitutionally protected interest in being free of the stigma of not having such diplomas, again regardless of whether they have learned anything.

Judge Carr's treatment of the Equal Protection Clause was equally expansive. The United States Supreme Court has held that de-

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fendants cannot be found to have violated that clause on the basis of disparate racial impact alone. For a constitutional violation to occur, discriminatory intent is also required; but Judge Carr was not deterred. He claimed that because educators in Florida knew that more black students than white ones might fail the test, they could be presumed to have intended that result since it was a foreseeable consequence of their decision to require the test in the first place. Still in need of a clincher for technical legal reasons, Judge Carr fell back on the ubiquitous perpetuation-of-past-discrimination line—a handy-dandy, all-purpose legal cement used to prop up any equal protection argument, no matter how weak.

This decision is remarkable not only because it turns the traditional standard of judicial restraint in constitutional cases on its head, but because it reflects an even greater disrespect for education and educators, and for reality itself. Doubters might try substituting a medical analogy for the educational situation described here, applying the same logic to it. Assume that you are dealing with physically ill children rather than with illiterate and anumerate ones. Would any responsible person assume that we could solve their problems by giving them all certificates of health? Absurd? Perhaps, but why is it any more absurd than assuming that what Debra P. and her peers really need is a piece of paper saying that they are high school graduates, rather than the skills that piece of paper was meant to represent?

Activist judges, and the self-proclaimed "public interest" spokespersons who applaud their increasingly frequent usurpations of the policy-making powers our Constitution reserves for representative assemblies, may be blind to absurdities like that, but ordinary Americans are not. They understand that illiterate and anumerate youngsters, with or without high school diplomas, are lost people in our society, and they have few illusions about the job and life prospects of these youngsters.

Militant rhetoric about children's rights notwithstanding, they know that in reality reading, writing, and arithmetic are the fundamental tools necessary to free children to choose the visions and vocations they will pursue. Without those fundamental tools, it is folly to think that youngsters can learn enough about anything else in the modern world—philosophy, plumbing, physics, firefighting, or what-have-you—to make a meaningful difference in their lives or our society. With them, they can learn whatever they choose to learn, with or without dependence on formal, academic instruction, and can do it whenever and wherever they please.

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Court pressures aside, few employers who need literate workers are fooled by diplomas. Those few catch on, after a short time, or go out of business. In a society in which unskilled labor is increasingly unneeded and unwanted, people who lack the skills to do anything else face bleak futures, and court decisions like the one in the *Debra P.* case do nothing to change that, except for the worse. Thus, the saddest thing about the case is that although the state of Florida lost, Debra P. and her peers did not really win anything of value.

Absalom and his peers

Facts summarized in the foregoing pages make it evident that characterizations of the war on testing as a struggle between David, initially a poor youth with a pure heart, and Goliath, a Philistine giant who uses his great powers to victimize and destroy, are inappropriate and misleading. Goliath, a man from a different and competing culture, is not a combatant in this war at all—at least, not in any direct sense. This battle is among men and women from the same culture, often from the same family, and it is in part, although only in part, a generational battle—one more in the long line of initially bloodless civil wars that mark and shape the history of Western man.

That is what makes it so important and so painful for so many of us. It is also why Mr. Fiske and his friends may, after all, be right in thinking that the Bible, the basic book of Western civilization, may be relevant here in policy terms, even though religion as such is and should be irrelevant to the legal battle over tests, truth, and standards. In the Bible itself, as distinct from their "biblical scenario," David is an early prototype of Western man in spirit if not in location, and he, too, has many sons who reject his standards, betray them, and come to grief: Amnon who rapes his sister; Absalom, who avenges her but proves more corrupt than the brother he kills, seeking afterward to compound fratricide with patricide in order to further his narcissistic political fantasies; and Adonijah, who involves his mother in his schemes to win sexual and political power without limits and without standards, other than those that are pleasing to his vanity.

David himself is a study in contrast, a man with few faults who serves a king with many, and manages to be loyal to him and, simultaneously, to what is best in their shared tradition, even when Saul betrays it. Saul did that by repeatedly behaving like a despot

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whose whim is law when, in the tradition both were born to, the legitimacy of his reign is conditional on fidelity to the limits inherent in the legal system that predated his kingdom and survives it. Impressive as it is, David's fidelity is easily matched by that of Jonathan, Saul's biological heir, bypassed through no fault of his own and arguably a better man than David, a successor chosen on the basis of merit rather than lineage. Their tragedy is that both David and Jonathan suffer spectacular failures in passing their own standards on to their offspring.

Why is Saul, half-mad, often malicious, and always inconstant, so successful a progenitor, and David, like his friend Jonathan, so much less so? Why did Saul produce men, David and Jonathan monsters? Is it, as the modern scenario would have it, because David treated his descendants too harshly, forcing them to bow to standards they had not themselves shaped to their hearts' desire, depriving them of that modern panacea, love?

Not according to the Bible, for there we learn that David's love for Absalom is so unconditional that even when this son raises up armies and sends them out to hunt him down and topple his house and all he has built, the old warrior cannot bring himself to fight back in earnest. His captains do it for him and, when they disobey his orders and Absalom dies, David is immobilized with grief and with guilt, remembering not Absalom's sins but the single, gross excess of his own long life: his betrayal of Uriah the Hittite. Is that, then, the cause of all his troubles and his children's? David, the real biblical David, thought so. After Uriah dies, he hears God, speaking through Nathan the prophet, say to him: "Now therefore the sword shall never depart from thy house. . . . Behold, I will raise up evil against thee out of thine own house."

Had his captains agreed, we would have a very different history, but as it happened they did not. Perhaps they thought David's fault, if any, lay in his refusal to apply the same standards to his children that he applied to himself. That, at any rate, is my understanding of Joab's speech to David, the speech that rouses him from the depths of his grief and returns him to his duty as a standard bearer and a limit setter for all his people, his remaining sons included. One of them, as it happened, turned out rather well. His name was Solomon; he married Sheba, a foreign queen from a dark land who shared his standards, and they brought peace and prosperity but not, of course, perfection to the worlds that they governed. Bad consumer law, pop psychology, and parodies on equal protection seem unlikely to do as well.

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CURRENT READING

Poor America

Hardly anyone feels rich these days, but it may come as a surprise that 85 percent of Americans are living in what are officially designated "distressed areas." Spencer Rich in *The Washington Post* (May 4, 1980) explains how we arrived at our putative poverty:

> It's almost a law of American politics, enshrined in the lore of Capitol Hill operations, that a federal program survives and grows fat when the money is spread around liberally, not limited to some tiny constituency.
>
> So perhaps it is no surprise that a little program, which began in 1961 by dishing out development aid to businesses and governments in "depressed areas" of Appalachia and small-town America, now counts nearly 85 percent of the country's population as being in "distressed areas" eligible for help.
>
> Sen. William Proxmire of Wisconsin, often critical of federal aid programs, outdid himself on the eligibility issue when the measure—now called the Public Works and Redevelopment Act—reached the Senate floor for its new authorization last year.
>
> "Get this—84.5 percent of the population eligible for assistance, 84.5 percent! That is ridiculous. It is a joke," he shouted. "I do not know how you can run a reasonable economic development program if you have to define 84.5 percent of the population as eligible and as living in distressed areas."
>
> How you do it is really no mystery, as Proxmire surely knows. You take a program created in the 1960's with a modest $90 million or so a year to give to a limited number of poverty pockets. In 1966, for example, eligible areas had a total population of about 29 million, according to an Economic Development Administration booklet published by the parent Commerce Department.
>
> Then you start to diversify until, according to department estimates and statements on the House and Senate floors, nearly 2,500 of the nation's 3,000-odd counties now meet the program's unemployment and poverty criteria—areas with an estimated population of nearly 190 million. . . .
>
> Not only is the program now virtually coterminous with the entire country, but it is getting into some pretty big enterprises, especially through the Chrysler-like loan guarantee route. EDA has guaranteed $83 million in loans to help Sea Train build commercial ships in the Brooklyn Navy Yard in order to create jobs after the Navy closed its

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operations there. Under a special program, it has reserved a $100 million loan guarantee for construction of a new steel plant in depressed Youngstown, Ohio. And it is providing another $100 million guarantee to help the Wheeling-Pittsburgh Steel Corporation build a plant to produce extra-long train rails in Monessen, Pennsylvania.

It should surprise nobody, then, that the something-for-almost-everybody measure cleared the Senate by a margin of 83 to 17 and the House by 301 to 99—with EDA's grant, loan and loan-guarantee authority expanded to more than $3 billion.

. . . . All from a little program created for Appalachia and small-town America.

The Two Paycheck Family

Though high upper-middle-income tax rates virtually guarantee that it is principle rather than economic benefits that motivates second-wage earners in well-heeled families, many women, not surprisingly, work to boost their families' incomes. Beverly Johnson surveyed the increase in multi-earner families in a recent issue of the *Monthly Labor Review* (April 1, 1980):

The rising number of multi-earner families has been one of the most important socioeconomic developments of the 1970's. In March 1979, a record three out of every five married-couple families reported having had at least two members who were earners during the previous year. Since 1970, the number of such families has increased by more than 3 million, reaching 28.4 million.

Almost exclusively responsible for the rising number of multi-earner families have been the steep annual increases in the number and proportion of working wives. Year after year, married women have continued to record spectacular gains in labor-force participation. Since March 1970, the number of wives in the work force has increased by one-third, rising from 18.4 million to nearly 24 million. More than half of this gain (54 percent) was among wives 25 to 34 years old.

The labor force participation rate of married women had risen to 49.4 percent by March 1979, an increase of nearly 9 percentage points since 1970. In contrast, the participation rate of husbands has been in a long-term decline. At 81.4 percent in March 1979, the rate for husbands had dropped by more than 5 percentage points since 1970—a reduction greater than that recorded during the preceding two decades.

Continuing its upward trend, the rate for white wives rose significantly over the year ending in March 1979, reaching 48.5 percent. The participation rates for black (59.7 percent) and Hispanic wives (46.3 percent) registered no significant change from a year earlier but have also risen considerably since the mid-1970's. Reflecting the higher labor force participation rate of black wives, the proportion of black families with two earners or more during 1978 was higher than that for white or Hispanic; 64.5 percent of black married-couple families, compared with 59 percent of white and Hispanic families, had more than one earner.

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There was little year-to-year change in the labor force participation of husbands whether white, black, or Hispanic. However, both the rates for white and black husbands have drifted down over the decade, to 81.5 and 80.0 percent. The rate for Hispanic husbands (87.4 percent) was at the same level in early 1979 as at mid-decade (when separate data for this ethnic group first became available).

Working wives made substantial contributions to their families' economic welfare. In 1978, they contributed about 26 percent to family income, a proportion that varied considerably by the extent of their work experience. When wives worked 50 to 52 weeks full time they contributed an average of 40 percent to family income; when they worked full time 27 to 49 weeks, they contributed about 30 percent; and when they worked up to a half year full time or 1 to 52 weeks part time, their share was approximately 11 percent. These proportions have remained relatively unchanged throughout the 1970's. One factor accounting for this is that there has been little change in the occupational distribution of wives; that is, they have not yet gained full access to many of the high-skill, high-paying jobs. It is largely because of this that the basic ratio of women's to men's earnings has not changed much for years.

The impact of wives' earnings on family income is clearly shown by the income differences between one-earner and multiple-earner families. In 1978, median family income for white multi-earner families was $23,300, 37 percent higher than families with one earner. For black families with two earners or more, median family income was $19,500, 66 percent higher than that of families with only one earner. Hispanic multi-earner families had an average annual income of $17,900, 59 percent higher than that of families with only one earner. Because of this, married-couple families with multiple earners have an exceedingly low incidence of poverty. For white families with more than one earner, fewer than 2 percent were living below the poverty level, compared with 6 percent of the families with only one earner and 16 percent of those families with no earners. For black and Hispanic multi-earner families, only about 5.5 percent were living below the poverty level. However, as among the white population, the poverty rate among these minority groups was four times higher for families with only one earner and eight to nine times higher for those married-couple families with no earners in the home.

Young People and Jobs

In their Summary Report of recent work by scholars associated with the National Bureau of Economic Research, authors Richard B. Freeman and David A. Wise help put in perspective those troubling statistics on youth unemployment:

> One of the most important lessons from our analysis is that standard published statistics may not adequately measure the dimensions of youth employment and joblessness. First, different sources of employment information lead to widely differing estimates of the number of

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employed youths. The Current Population Survey (CPS), which provides the official government statistics, reports a smaller number of youth employed than do other surveys financed by the government.

Second, the traditional distinction between being unemployed (out of work and looking for a job) and being out of the labor force (out of work and not looking for a job) appears less clear for young persons than for older workers. Many youths are on the borderline between seeking work and not seeking work and switch from one group to the other frequently. Some youths who are out of the labor force may, in fact, desire to work but have simply given up looking. On the other hand, some youths who are classified as unemployed may not be seeking work as actively as unemployed adults. In addition, many youths who are classified as unemployed are also in school full time, an activity that many would consider as productive as work. A large proportion of youths also live with their parents and thus are not dependent entirely on their own earnings for support. While the difference between unemployment and being out of the labor force is ambiguous for all age groups, the ambiguity is especially great for youths.

Constant references to the youth employment problem, as if all or the majority of young persons have difficulty obtaining jobs, appear to misinterpret the nature of the difficulty. Youth joblessness, like adult joblessness, is concentrated, by and large, among a small group who lack work for extended periods of time. Over half of the male teenage unemployment is, for example, among those who are out of work for over six months, a group constituting less than 10 percent of the youth labor force and only 7 percent of the youth population. The concentration of joblessness among a small group means not only that lack of employment is a major problem for that group but also that obtaining work presents little difficulty for the bulk of youths.

The relatively small group of youths who are chronically without work have distinct characteristics. They are disproportionately black, disproportionately high school dropouts, and disproportionately residents of poverty areas. Over time, the percentage of black youths with jobs has fallen, while the proportion of white youths with jobs has not, implying a deterioration in the employment chances of black youths. Despite the extremely high rate of unemployment among black youths, the fact is that since there are many more whites than blacks in the population, most unemployment—even among high school dropouts in poverty areas—is accounted for by whites.

While the employment of black youths has fallen sharply over the past decade, the wages of young blacks have risen relative to those of white youths. By the mid-1970's, the wage rates of black and white youths with comparable levels of education were approximately equal.

One of the most important determinants of youth employment is the strength of the economy as a whole. When the aggregate level of economic activity is high—as measured by high levels of adult employment, for example—youth employment is also high. Qualitatively, the employment of youths appears to be one of the most highly sensitive variables in the labor market, rising substantially during boom periods,

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relative to long-term average rates of change, and falling substantially during less-active periods.

Another frequently mentioned determinant of youth employment is the proportion of youths in the population. According to our analysis, however, while the increase in the relative number of young people in recent years has adversely affected youth employment, its primary impact has been to depress youth wages relative to adult wages.

At any given time, youths with certain background characteristics tend to have lower employment rates than [ones] with other characteristics. Some of the characteristics associated with lower employment appear to be unrelated to wages. Youths from poor families are less likely to be employed than youths from wealthier families, although once employed, both groups earn about the same wages. Blacks are employed less than whites, but earn about the same wages when employed. The sizable increase in the wage rates of black youths may have contributed to the relative deterioration in employment of black youths.

Some forms of preparation during high school are related to subsequent labor market experiences of youths, while others are not. Vocational training in high school shows little, if any, relationship to labor market success, even among youths who obtain no further education after high school. Academic performance in high school, on the other hand, is positively related to both employment and wages after graduation and to entry into the labor force. Most important and possibly surprising, youths who work in high school work much longer per year when they enter the labor force full time than teenagers who do not work while in high school, and they earn more per hour as well.

Xanadu, Vermont

In Winooski might the feds a modern "onion dome" decree. *The Economist* (May 3, 1980) tells the story:

> Residents of this unstately town in northern Vermont want to go Kubla Khan one better. They are asking the federal government for $55,000 to study a proposal to enclose Winooski's entire 800 acres under a gigantic dome. This money is the eye-catching part of a much larger request . . . $3.4 million which would go mostly for reconverting old homes.
>
> The dome is the brainchild of Mark Tigan, the town's community development director. One of the most successful local grantsmen in the country, Mr. Tigan has already managed to get almost $30 million for Winooski in federal grants during the past 15 years. For a town of 7,000 (its name is the local Indian word for "onion"), that is no mean achievement.
>
> Supporters of the "onion dome" argue that it would free summers of pigeons and winters of snow and road salt. It would give winter warmth to Winooskians too poor to fly to Florida, they say, and would give the Montreal Expos a convenient northern site for baseball training.

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